United States Court of Appeals

for the Second Circuit

APPELLANT'S APPENDIX

ORIGINAL

75-6106

United States Court of Appeals

For the Second Circuit

B

P/S

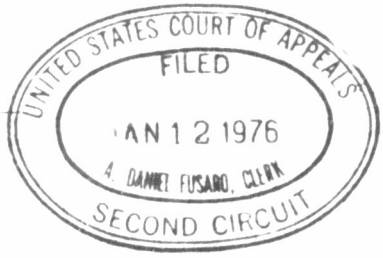
SECURITIES & EXCHANGE COMMISSION,

Plaintiff-Appellee,

-against-

SAMUEL H. SLOAN individually and
d/b/a SAM'EL H. SLOAN & CO.,

Defendant-Appellant.



On Appeal From The United States District Court For The Southern District Of New York

Appellant's Appendix

SAMUEL H. SLOAN
For Defendant-Appellant
917 Old Trents Ferry Rd.
Lynchburg, Virginia 24503
(804) 384-1207

Dick Basch Printers • [illegible] • 447-1358

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Clerk

By _____ Deputy Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- X

SECURITIES & EXCHANGE COMMISSION,

Plaintiff,

-against-

SAMUEL H. SLOAN individually and d/b/a SAMUEL H. SLOAN & CO.,

Defendant.

- X

74 Civil 5729
RJW

NOTICE OF MOTION

S I R :

PLEASE TAKE NOTICE that upon the annexed affidavit of Samuel H. Sloan sworn to the 6th day of March, 1975 and all the papers and proceedings had herein, the undersigned will move this court on March 18, 1975 at 2:15 P.M. for an injunction enjoining the Securities & Exchange Commission and all employees and agents thereof from harassment and annoyance of the defendant herein.

Dated: March 6, 1975

Yours, etc.

SAMUEL H. SLOAN
114 Liberty Street
New York, N.Y. 10006
(212) 553-8565

TO: Securities & Exchange Commission
26 Federal Plaza
New York, N.Y. 10007

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- X

SECURITIES & EXCHANGE COMMISSION,

Plaintiff,

-against-

SAMUEL H. SLOAN individually and d/b/a SAMUEL H. SLOAN & CO.,

Defendant.
- X

AFFIDAVIT

74 Civil 5729
RJW

STATE OF NEW YORK
SS:
COUNTY OF NEW YORK

SAMUEL H. SLOAN, being duly sworn, deposes and says:

1. I make this affidavit in support of a motion to enjoin the S.E.C. from harassment and annoyance of the defendant herein.

2. It has come to my attention that on Monday, February 24, 1975 an individual called my apartment and spoke with the person who answered my telephone. On this occasion, the caller did not identify himself or state the reason for his call. Instead, he inquired as to the name of the person who had answered the telephone and asked various questions concerning my activities. Only after his questions had been answered did he identify himself as Ralph Pernick of the Securities & Exchange Commission.

3. As the result of past experience, it has become my practice to tell anyone who might be answering my telephone that if the Securities & Exchange Commission calls, they are not to answer any questions or provide any information including information as to the names of any persons including themselves. Thus, according to my instructions, the identity

of the person who answered my telephone would not have become known except for the fact that Mr. Pernick asked questions prior to identifying himself.

4. I consider conduct of this sort to be unethical and I expressed this view to Mr. Pernick when he called me the next day. I also asked Mr. Pernick if he was an attorney. He stated that he was a law school graduate but had not yet been admitted to the practice of law. I would submit that if conduct of this sort is characteristic of Mr. Pernick, then he should not be admitted to practice law in this State.

5. I would like to point out that this practice is not unusual on the part of the S.E.C. When I was actively in business, employees of the S.E.C. would frequently call and ask questions without saying who they were. I would submit that while the S.E.C. may feel entitled to do this in the general case, they should not feel entitled to do it in my case. I have already sued the S.E.C. over precisely this type of conduct. In Sloan v. S.E.C., 74 Civil 2792, I alleged that on August 16, 1973, S.E.C. staff attorney Jerome Selvers and S.E.C. staff investigator Sheldon Kanoff entered my office unexpectedly and accosted my secretary, Helga Thorvardardottir. This allegation was substantially admitted in the answer filed by the S.E.C. although the S.E.C. denied that the conduct displayed by these two S.E.C. employees was improper. I would submit, however, that their conduct was clearly improper in view of the fact that they demanded and obtained the name, home address, and home telephone number of Miss Thorvardardottir and held her in my office against her will and would not permit her to leave for about fifteen minutes. Needless to say, I was not present when these events occured or else I would not have allowed

them to happen.

6. For the last four years, the S.E.C. has been systematically harassing me by improper means. Their greatest success has lain in their ability to alienate my closest personal friends. This Court is already familiar with the names of Joseph Iny, Zia Marashi, Hafdis Simonarson, and Johanna Baldursdottir. This Court is also familiar with the fact that these four individuals are strongly alienated against me. What this Court may fail to realize is that these four individuals were all once among my closest personal friends and the reasons for which they became alienated against me were directly related to the fact that the S.E.C. called each of them down to its offices at 26 Federal Plaza to be interrogated concerning my activities. Briefly stated, the facts are that I have been under continuous investigation by the S.E.C. for the past four years and, during the course of this investigation, the S.E.C. has continuously meddled into my personal affairs and has even made it difficult for me to maintain lasting friendships. It is for this reason that I have instructed anyone who answers my telephone not to give any information about themselves and particularly not to state their name. I do not want my personal friends to be called down to the offices of the S.E.C. and interrogated particularly in view of what has occurred in the past. I do not want them to become subject to the subpoena power of the S.E.C. In short, I want the S.E.C. to keep out of my personal affairs. Clearly, in view of past events, the only way to obtain this result will be to have this motion granted.

WHEREFORE, the deponent respectfully prays that this court grant his

motion for an injunction enjoining the Securities & Exchange Commission and all agents and employees thereof from harassment and annoyance of the defendant herein.

SAMUEL H. SLOAN

Sworn to before me this
6th day of March, 1975

Notary Public

ROBERTA E. EISHBEIN
NOTARY PUBLIC, STATE OF NEW YORK
NO. 31-4519843
QUALIFIED IN NEW YORK COUNTY
COMMISSION EXPIRES MARCH 30, 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION

Plaintiff,

- against -

SAMUEL H. SLOAN, individually and d/b/a SAMUEL H. SLOAN & Co.

Defendants.

74 Civ. 3739 (C.W.)

RESPONSE OF THE SECURITIES AND EXCHANGE COMMISSION TO DEFENDANT'S MOTION FOR [illegible] AGAINST PLAINTIFF

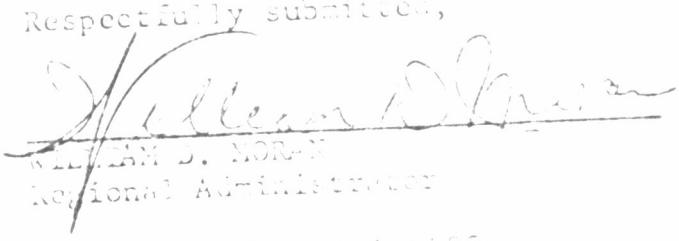
As is demonstrated in the annexed affidavit of [illegible] Spindler, the Commission's staff has attempted to [illegible] Sloan solely for the purpose of performing the statutory duties of the Commission in enforcing the federal securities laws and of enforcing this Court's order of permanent injunction dated January 27, 1974 in Securities and Exchange Commission v. Samuel H. Sloan and Samuel H. Sloan & Co., 74 Civ. [illegible], and to enforce the injunction [illegible]

The Commission's prior activities have [illegible] ducted themselves properly in their attempts to enforce the orders of this Court and otherwise. There has been no "harassment" and, accordingly, no injunction should issue.

15

against the Commission or its employees.

Respectfully submitted,



WILLIAM J. NORMAN
Regional Administrator

Attorney for Plaintiff
SECURITIES AND EXCHANGE COMMISSION
New York Regional Office
26 Federal Plaza
New York, New York 10007
Telephone No.: (212) 264-1637

Of Counsel:

William Nortman
New York Regional Office

Thomas L. Taylor III
Washington, D.C.

Dated: New York, New York
March 24, 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION

Plaintiff,

-against-

[illegible], Individually and d/b/a
SAMUEL H. [illegible] CO.

Defendant.

STATE OF NEW YORK)
COUNTY OF [illegible]) ss.:

[illegible], being duly sworn, deposes and says:

1. I am over 21 years of age and am employed by the Securities and Exchange Commission, [illegible] Office. I am not a party to this action.

2. On March 24, 1971, I served a copy of the annexed Memorandum of Defendants' Motion [illegible] Motion to Vacate Default, Notice of Cross-Motion [illegible] Memorandum in Support of Cross-Motion for a Default Judgment [illegible] Affidavit in Opposition to Defendants' Motion for an Order [illegible] Samuel H. Sloan and Samuel H. Sloan & Co. by depositing true copies thereof enclosed in an official depository under the exclusive care and custody of the United States Postal Service, addressed to the following persons:

1. Samuel H. Sloan
120 Liberty Street
New York, New York 10006

2. Samuel H. Sloan
1761 Eastburn Avenue
Bronx, New York

3. Samuel H. Sloan
c/o 917 Old Trent's Ferry Road
Lynchburg, Virginia

4. Samuel H. Sloan
Champlain Valley Physicians Hospital
Medical Center
Plattsburgh, New York

William Horman
WILLIAM HORMAN

Sworn to before me this
25th day of March, 1975.

Douglas S. Faubl
NOTARY PUBLIC

Notary Public, State of New York
No. 7001870
Qualified in Kings County
Commission Expires March 30, 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION

Plaintiff,

-against-

SAMUEL H. SLOAN, Individually and d/b/a
SAMUEL H. SLOAN & CO.

Defendants.

77 Civil 770 (KTD)

MEMORANDUM IN SUPPORT OF THE COMMISSION'S MOTION FOR A CONTEMPT CITATION AGAINST SAMUEL H. SLOAN & CO., AND IN OPPOSITION TO DEFENDANTS' MOTION FOR AN INJUNCTION

Respectfully submitted,

WILLIAM D. [illegible]
Regional Administrator

Attorney for Plaintiff
SECURITIES AND EXCHANGE COMMISSION
New York Regional Office
26 Federal Plaza
New York, New York 10278
Telephone No.: (212) [illegible]

Of Counsel:

William Houghton
New York Regional Office

Thomas L. Taylor, III
Washington, D.C.

Dated: New York, New York
March 24, 1978

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION

Plaintiff,

against

SAMUEL H. SLOAN, Individually and d/b/a SAMUEL H. SLOAN & CO.

Defendants.

74 Civil [illegible]

[illegible]

On January 27, 1974, this Court entered [illegible] temporarily enjoining Samuel H. Sloan (Sloan) and Samuel H. Sloan & Co. (Sloan & Co.) from making use of the mails or [illegible] facilities of interstate commerce to effect [illegible] in or to induce or attempt to induce the purchase or sale of any security otherwise than on a national securities exchange and at a time when the aggregate indebtedness of Sloan [illegible] or any other broker or dealer with which Sloan [illegible] controlling persons, to all other persons and to [illegible] may exceed or has not applied or is less than [illegible] as required by Section 15(c)( ) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. 78(o)(c)(3) and the rules [illegible]

rule thereunder. That order of permanent injunction also enjoined Sloan & Co. and Sloan from making use of the mails or means or instrumentalities of interstate commerce to effect any transaction in or to induce or attempt to induce the purchase or sale of securities otherwise than on a national securities exchange while and at a time when Sloan & Co.'s books and records are those of any broker-dealer registered with the Commission in which Sloan becomes a principal or a controlling person and not duly kept and maintained pursuant to Section 17(a) of the [illegible], 15 U.S.C. 78q(a) and the bookkeeping rules thereunder. [illegible] appeal from that judgment of permanent injunction is presently pending in the United States Court of Appeals for the Second Circuit. The Court of Appeals has denied Sloan's motion to stay the effectiveness of that injunction pending appeal.

On November 5, 1974 Sloan sent a letter to the Commission stating that 'it is my intention to resume activities as a dealer in over-the counter securities forthwith.' He further advised that some of his books and records were located at 1711 Eastburn Avenue, Bronx, New York, but that he would not permit any officer or employee of the Securities and Exchange Commission to enter my personal residence for any purpose unless a valid search warrant were produced.' (A copy of Mr. Sloan's

letter is attached to the Affidavit of Ira D. Spindler submitted herewith.)

In Decem[illegible] 1974, the Commission learned that Sloan was submitting [illegible]ations to the National Quotations Bureau ("NQB") to enter quo[illegible]tions in the pink sheets while not in posse[illegible]sion of curre[illegible]nancial or other information with respect to the securi[illegible]which were submitted as required by Commission Rule 15c[illegible]17 C.F.R. 240.15c2-11 ("Quotations Initiation Rule").

In view of Sloan's representation that he intended to conduct business as a broker-dealer in securities without giving the Commission access to his books and records, and in view of evidence that Sloan was submitting quotations to the quotations media while not in compliance with Rule 15c2-11, the Commission commenced the instant action against Samuel H. Sloan individually and d/b/a Samuel H. Sloan & Co. The Complaint sought a temporary restraining order, a preliminary injunction and a permanent injunction against Sloan from violating Section 17(a) of the Exchange Act and the Quotations Initiation Rule thereunder. The Commission sought a mandatory order which required Sloan to permit immediate examination in an easily accessible place, of the books and records of Sloan and Sloan & Co. as required by Section 17(a) of the Exchange Act and Rule 17a-4 thereunder.

On December 30, 1974, Judge Robert J. Ward entered an order temporarily restraining Sloan and Sloan & Co. from violating the Quotations Initiation Rule and directing Sloan to permit an immediate examination in an easily accessible place by the Commission's representatives, of the books and records of Sloan and Sloan & Co. A copy of that order was personally served upon the defendant on December 30, 1974. On January 6, 1975, Judge Thomas P. Griesa entered an order extending the temporary restraining order to and including January 17, 1975.

On January 17, 1975, after an evidentiary hearing, Judge Ward entered an order of injunction granting all the relief sought by the Commission including an order directing Sloan to permit immediate inspection of his books and records by the Commission. Sloan was served with this injunctive order in the court. (Transcript of Proceedings, January 17, 1975, pp. 3-5).

As will appear from the annexed affidavit of Ira D. [illegible], defendant Sloan willfully disobeyed the order of injunction entered by the Court on January 17, 1975. He has refused to give the Commission's representatives access to his books and records (and has continued to submit quotations to the quotations media while not in possession of the information prescribed in Rule 15c2-11.) Sloan has indicated that he will continue to willfully

violate the provisions of the federal securities laws, and the rules promulgated by the Commission thereunder, in defiance of the orders of this Court. Moreover, unless this Court's mandatory order issued in the instant action requiring Sloan to give the Commission access to his books and records is enforced, there is no way to compel compliance with [illegible] obtained against Sloan and Sloan & Co. No. 71 Civ. [illegible].

[illegible]

[illegible]

It is self-evident that the effectiveness of the [illegible] remedy is dependent upon the Court's power to punish [illegible]. While the motion which the Commission has presently brought before the Court seeks a citation for civil contempt which is remedial in nature and designed to secure obedience, it is clear that criminal contempt may also be appropriate in view of the [illegible]'s violations of this Court's orders. While the [illegible] also plainly constitute civil contempt, those acts [illegible] of the Court's orders may also be punishable in criminal [illegible]. See, United States v. United Mine Workers of America, [illegible] U.S. 258 (1947).

In enforcing its orders through civil contempt, the Court is free to exercise great discretion in imposing an appropriate remedy. Thus in United States v. United Mine Workers of America, supra, at p. 304, the Supreme Court stated that the court imposing sanctions should consider the character and magnitude of the harm threatened by continued contumacy, and the probable effectiveness of any suggested sanction in bringing about the court's desires. Thus, the range of possible remedies includes [illegible] to compel compliance. It would also [illegible] that the inherent power of the Court to have [illegible] seized and records moved to an easily accessible place so [illegible] Commission's representatives might inspect them or [illegible] by other appropriate remedy to insure [illegible].

1/ Judicial approval of impoundment of books and records in [illegible] circumstances has been given by the Supreme Court in Wilson v. United States, 372 U.S. 305 (1957). There [illegible] to impound a large corpus for pro various [illegible] of public duration, a defendant [illegible] as he could not locate the [illegible] [illegible] representations, the trial court [illegible] the bulk of the records impounded by a United [illegible] The [illegible] documents were found among the [illegible] records and the defendant subsequently [illegible] until it entered. The conviction was [illegible] Supreme Court.

The Supreme Court has expressly approved the civil contempt remedy to coerce the production of books and records pursuant to a Securities and Exchange Commission subpoena. See Penfield Company v. Securities and Exchange Commission, 330 U.S. 585 (1947).[2] The need for such relief has even greater force here in view of defendant Bloom's already been adjudicated in violation of federal securities laws and continues to do so in defiance of injunction.

While defendant Bloom has appealed the Court's order of injunction in this action to the United States Court of Appeals for the Second Circuit, apparently asserting the unconstitutionality of the Securities Exchange Act and Rules thereunder, this Court has refused to stay the effectiveness of the injunction. And even if the defendant's attack upon the order of injunction were meritorious, while is axiomatic that a court order must be obeyed, even pending its invalidity, until it is reversed or set aside. Maryland v. Paramount Pictures Corporation, 238 F.2d 851 (2d Cir. 1956), citing United States v. United Mine Workers of America, 330 U.S. 258, 293-294.

2/ In Penfield the district court had imposed a flat fine as a remedy more like one in criminal than in civil contempt. The Court of Appeals reversed and directed a term of imprisonment conditioned upon compliance with the subpoena. The Supreme Court affirmed.

In addition to the usual civil contempt remedies, a court may compel compliance with its orders pursuant to Rule 70 of the Federal Rules of Civil Procedure which provides in pertinent part:

> If a judgment directs a party to . . . deliver deeds or other documents or to perform any other specific act and the party fails to comply within the time specified, the court may direct the act to be done at the cost of the disobedient party by some other person appointed by the court . . . On application of the party entitled to performance, the clerk shall issue a writ of attachment or sequestration against the property of the disobedient party to compel obedience to the judgment. The court may also in proper cases adjudge the party in contempt . . .

The purpose of this rule is to preclude recalcitrant parties from frustrating court orders for the performance of specific acts. 7 Moore, Federal Practice, Sec. 70.02. The rule seems readily applicable in the instant circumstances where Lloyd is recalcitrantly disobeying this Court's mandate that he give the Government access to his books and records.

CONCLUSION

For the foregoing reasons, the defendant Samuel H. Sloan should be adjudged in civil contempt of this Court and the Court should impose remedial sanctions upon the defendant calculated to compel compliance with its order of injunction. Other members of the Commission's staff have attempted to communicate with Mr. Sloan only to the extent necessary to perform the statutory duties of the Commission and to enforce the orders of this Court, and have at all times conducted themselves properly, the defendant's motion for injunction should be denied.

Respectfully submitted,

William D. Moran by William Rotsan

WILLIAM D. MORAN
Regional Administrator

Attorney for Plaintiff
SECURITIES AND EXCHANGE COMMISSION
New York Regional Office
26 Federal Plaza
New York, New York 10007
Telephone No.: (212) 264-1636

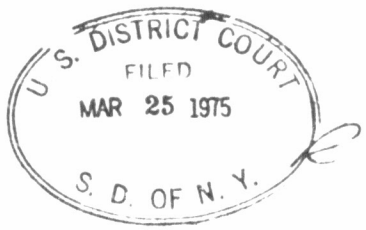
Of Counsel:

William Hortman
New York Regional Office

Thomas L. Taylor, III
Washington, D.C.

Dated: New York, New York
March 24, 1977

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



SECURITIES AND EXCHANGE COMMISSION

Plaintiff,

- against -

SAMUEL H. SLOAN, individually and d/b/a SAMUEL H. SLOAN & Co.

Defendants.

74 Civ. 5729 (RJW)

NOTICE OF MOTION

PLEASE TAKE NOTICE that upon the annexed affidavit of Ira B. Spindler, the plaintiff Securities and Exchange Commission will move this Court on April 1, 1975 at 2:15 p.m. or as soon thereafter as the matter may be heard at the United States Courthouse, New York, New York, to adjudge the defendant in contempt of this Court for wilful violations of its order of injunction dated January 17, 1975, and to impose such remedial sanctions as this Court may deem appropriate to compel compliance with that order.

Respectfully submitted,

WILLIAM D. MORAN
Regional Administrator

Attorney for Plaintiff
SECURITIES AND EXCHANGE COMMISSION
New York Regional Office
26 Federal Plaza
New York, New York 10007
Telephone No.: (212) 264-1636

Of Counsel:

William Nortman
New York Regional Office

Thomas L. Taylor III
Washington, D.C.

Dated: New York, New York
March 24, 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION Plaintiff, - against - SAMUEL H. SLOAN, individually and d/b/a SAMUEL H. SLOAN & Co. Defendants.	74 Civil 5729 (RJW) AFFIDAVIT IN SUPPORT OF THE COMMISSION'S APPLICATION FOR CONTEMPT CITATION AND RESPONSE TO DEFENDANT'S MOTION FOR INJUNCTION AGAINST HARASSMENT

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

IRA B. SPINDLER, being duly sworn, deposes and says:

1. I am employed by the United States Securities and Exchange Commission ("Commission"), plaintiff in the above-entitled action, in its New York Regional Office as a financial analyst in the Branch of Market Surveillance, which exercises regulatory responsibilities with respect to trading in the over-the-counter markets.

2. I make this affidavit in support of the Commission's Application for a Contempt citation and its response to the defendant Samuel H. Sloan's motion for an injunction against harassment by the Commission.

3. This affidavit is based upon my personal knowledge of the facts, correspondence and other documents contained in the files of the Commission, information received from the National Quotation Bureau ("NQB"), information contained in the pleadings, affidavits and transcript of hearings in this action, discussions

with various staff members of the Commission, and upon information and belief.

4. In a prior action entitled Securities and Exchange Commission v. Samuel H. Sloan and Samuel H. Sloan & Co., No. 71 Civil 2695, this Court on January 22, 1974 entered a judgment permanently enjoining those defendants from further violations of Section 15(c)(3) of the Securities Exchange Act of 1934, 15 U.S.C. 78o(c)(3), and the net capital rule thereunder. The judgment further permanently enjoined the defendants from violations of Section 17(a) of the Exchange Act, 15 U.S.C. 78q(a) and the bookkeeping rules thereunder. On March 11, 1974, defendant Sloan filed a notice of appeal from that order and moved the United States Court of Appeals for the Second Circuit to stay the effectiveness of that judgment pending appeal. The Court of Appeals denied that stay on October 29, 1974.

5. On November 6, 1974, defendant Sloan sent a letter to the Commission stating that "it is my intention to resume activity as a dealer in over-the-counter securities forthwith." The letter further advised that some of Sloan's books and records were located at 1761 Eastburn Avenue, Bronx, New York but that he would not permit any "officer or employee of the Securities and Exchange Commission to enter my personal residence for any purpose" unless a valid search warrant were produced. Sloan's November 6 letter is attached hereto as Exhibit 1.

6. In December, 1974 I received information from the NQB indicating that Mr. Sloan was submitting, as a broker-dealer,

quotations for publication in the pink sheets while not in possession of current financial or other information with respect to the companies for which he sought to enter quotations as required by Section 17(a) of the Exchange Act, 15 U.S.C. 78q(a) and Rule 15c2-11 thereunder, 17 C.F.R. 240.15c2-11. On December 18, 1974 I telephoned Mr. Sloan and informed him that any quotations published for these companies would not comply with the Commission's rules. Sloan stated that it was his intention to wilfully violate Rule 15c2-11 with regard to these issues and that he also intended to publish quotations for at least 93 other companies for which current information was not available.

7. In view of Mr. Sloan's expressed intention to conduct business as a broker-dealer while not permitting the Commission access to his books and records and his expressed intention to violate Rule 15c2-11, the Commission filed its complaint in the instant action seeking a temporary restraining order and a preliminary and permanent injunction against Sloan from violating Section 17(a) of the Exchange Act and the quotations initiation rule (Rule 15c2-11 thereunder). The complaint also sought a mandatory order requiring Sloan to permit immediate examination of the books and records of Sloan and Sloan & Co. in an easily accessible place by representatives of the Commission.

8. On December 30, 1974, Judge Robert J. Ward endorsed an order to show cause why a preliminary injunction should not be granted as requested by the Commission and entered an order temporarily restraining Sloan from violating Rule 15c2-11 and

directing him to permit immediate examination in an easily accessible place of the books and records of Sloan and Sloan & Co. A copy of this order was personally served upon the defendant on December 30, 1974. On January 8, 1975, Judge Thomas F. Griesa endorsed an order extending the temporary restraining order to and including January 17, 1975.

9. On January 17, 1975, after an evidentiary hearing, Judge Ward entered an order of injunction which granted all the relief sought by the Commission including a mandatory order requiring Sloan to permit an immediate inspection of his books and records by representatives of the Commission. That order of injunction was personally served upon Mr. Sloan in open court. (Transcript of Proceedings, January 17, 1975, p. 86).

10. On February 26, 1975, at approximately 9:15 a.m., Ralph Pernick, a staff member of the New York Regional Office, telephoned Sloan at 212-583-8586. Pernick identified himself, stated that he worked for the Securities and Exchange Commission, and asked Sloan what time during the following week would be convenient for Sloan for an examination of the books and records of Sloan & Co. by representatives of the Commission. Sloan replied that no time during that week would be convenient and that he was "not particularly inclined to cooperate" with the Commission.

11. Sloan then asked Pernick what books and records he would want to see. Pernick stated that the staff wanted to examine various books and records, including capital computations, to determine if Sloan & Co. was in compliance with the net

capital rule, among others. Pernick then stated that in view of Sloan's statement that he was "not particularly inclined to cooperate" with the Commission, it appeared that Sloan had not yet decided whether he would permit such an inspection. Pernick then asked Sloan when the latter would make up his mind.

12. Sloan then stated that he would not let examiners of the Commission inspect the books and records of Sloan & Co.

13. A letter memorializing this conversation was mailed to Sloan on February 27, 1975 (a copy of this letter and the return receipt are attached as Exhibit 2. Inexplicably, after the Commission received the return receipt, the letter was returned unclaimed to the Commission). The letter specifically stated that at 10:00 a.m., March 5, 1975, two representatives of the Commission would arrive at Sloan's apartment at 1761 Eastburn Avenue, Bronx, New York[1/] to conduct such an examination.

14. At 10:00 a.m., March 5, 1975, I arrived at Sloan's apartment at 1761 Eastburn Avenue, Bronx, New York accompanied by Thomas Dolan, a securities compliance examiner in the Commission's New York Regional Office. Although we knocked on the door, which was partially open when we arrived, there was no reply or response from inside the apartment. I then telephoned Sloan's apartment.

1/ Sloan stated on the record that his books and records were kept in his apartment (Transcript of Proceedings, December 30, 1974, pages 12-13, 25). His letter to the Commission dated November 6, 1975 repeats this assertion (Exhibit 1).

15. A woman, later identified as Palina Kristjanstottir, answered the telephone. I gave my name, identified myself as an employee of the Commission, and asked if I had reached the apartment of Samuel Sloan. She replied that it was Sloan's apartment, but that Sloan was not in the apartment and that she did not know where he was, nor where he could be contacted, nor when he would return. I then told her that another representative of the Commission was waiting in the hallway outside the door to Sloan's apartment, and that the two of us were there to inspect the books and records of Sloan & Co.

16. The Commission never received any communication from Sloan which indicated that Sloan could not or would not be at his apartment at 10:00 a.m., on March 5, 1975.

17. I rejoined Dolan in the hallway outside Sloan's apartment. At no time did Mr. Dolan or I enter Sloan's apartment. Kristjanstottir came to the door. Dolan told her his name, identified himself as an employee of the Commission, and said that he and I wanted to examine the books and records of Sloan & Co. Kristjanstottir told us that Sloan was not there and that he had not left any instructions. Upon hearing this, we left.

18. On March 6, 1975, at approximately 10:00 a.m., I returned to Sloan's apartment. I saw Kristjanstottir leaving Sloan's apartment. She saw me and told me that she had not seen or heard from Sloan since Dolan and I had left the apartment house the previous day. Upon hearing this, I immediately left.

19. Sloan has published quotations in the pink sheets for various securities as recently as March 21, 1975. Exhibit 3 is a copy of several quotations published in the pink sheets for Sloan within the past month. These quotations are typical ones for the relevant period. Each listing, whether or not accompanied by a bid or asked quotation, also includes the telephone numbers of Sloan's Bronx apartment or his hospital room in Plattsburgh, New York.

20. Sloan and Sloan & Co. have continually refused to act in accordance with the injunction entered against them in this action. Their acts are consistent with Sloan's repeated statements that he will not conduct himself according to the statutes and rules applicable to all broker-dealers. By submitting quotations in the pink sheets, Sloan is acting as a broker-dealer. Nevertheless, he has failed utterly to comply with the laws applicable to broker-dealers. Although two months have passed since Sloan was ordered to permit an immediate examination of his books and records, Sloan still refuses to allow such an examination. As a result, the Commission has been unable to obtain the relief granted by this Court.

Ira B. Splindler
IRA B. SPLINDLER

Sworn to before me this
24th day March, 1975

Vera B. Gaskin
NOTARY PUBLIC

VERA B. GASKIN

Samuel H. Sloan
120 Liberty Street
New York, N.Y. 10006
(212) 583-6437

November 6, 1974

Jerome Selvers
Securities & Exchange Commission
26 Federal Plaza
New York, N.Y.

Dear Mr. Selvers:

Please be advised that it is my intention to resume activities as a dealer in over-the-counter securities forthwith. For the purposes of mail and other official communications by the Securities & Exchange Commission, my address will continue to be 120 Liberty Street, New York, N.Y. 10006. However, my books and records are presently located at my personal residence at 1761 Eastburn Avenue in Bronx, N.Y. and at 917 Old Trent's Ferry Rd. in Lynchburg, Va. with the exception of those books and records which are at the United States Court of Appeals for the Second Circuit as part of the record of appeal in the appeal of S. E. C. vs. Sloan, U. S. C. A. docket no 74-1436. You should be advised, however, that I will not permit any officer or employee of the Securities and Exchange Commission to enter my personal residence for any purpose in the absence of the production of a valid and properly authorized search warrant. In this respect, I am asserting the rights which have been guaranteed me by the Fourth Amendment to the Constitution of the United States.

Very truly yours,

Samuel H. Sloan

Samuel H. Sloan

CC: United States Court of Appeals
for the Second Circuit
Foley Square
New York, N.Y.

Re: Docket no. 74-1436

Hon. Thomas P. Griesa
United States District Court
for the Southern District of N.Y.
Foley Square
New York, N.Y.

Re: 74 Civil 2792

Hon. Robert J. Ward
United States District Court
for the Southern District of New York
Foley Square
New York, N. Y.

Re: 71 Civil 2695

Thomas Taylor, Esq.
Office of General Counsel
Securities and Exchange Commission
500 North Capitol Street
Washington, D. C. 20549

Permit

NY-:RP

February 27, 1975

Samuel H. Sloan
Samuel H. Sloan & Co.
114 Liberty Street
New York, New York 10006

Dear Mr. Sloan:

This letter is to confirm yesterday's conversation between yourself and Ralph Pernick, a staff member of the New York Regional Office of the Securities and Exchange Commission.

As you know, the Securities Exchange Act of 1934 and the Rules thereunder require a registered broker-dealer to make, keep, and preserve certain books and records, which shall be subject to examination by representatives of the Commission. A judgment of permanent injunction in SEC v. Sloan & Co., entered January 22, 1974, enjoins you and Sloan & Co. from making use of the mails, means or instrumentalities of interstate commerce to effect any transactions in or to induce or attempt to induce the purchase of securities while the books and records of Sloan & Co. are not made, kept and maintained pursuant to the above statute and rules. Further, an order of preliminary injunction in SEC v. Sloan, dated January 17, 1975, ordered you and Sloan & Co. "to permit immediate examination" in an easily accessible place, by representatives of the Commission, of the books and records of Sloan & Co. and of yours. To date, you have not permitted such an examination to take place. Although you have appealled both injunctions, the Court of Appeals has denied your motions to stay these injunctions pending appeal.

Accordingly, in an endeavor to establish a time convenient to you for such an examination, Mr. Pernick telephoned you yesterday. You then informed Mr. Pernick that you were "not particularly inclined to cooperate" with the Commission. After Mr. Pernick had asked you for an indication of a time convenient for you for such an examination, you told him that you would not let representatives of the Commission examine said books and records.

Be that as it may, we wish to inform you that at 10:00 A.M., Wednesday, March 5, 1975, two representatives of the Commission will seek to conduct such an examination at 1761 Eastburn Avenue, Bronx, New York, pursuant to the statute, rules, judgment, and orders listed above.

Thank you.

Very truly yours,

WILLIAM D. MORAN
Regional Administrator

by

William Nortman
Assistant Regional Administrator

cc:

Thomas J. Taylor III, Esq.
Securities and Exchange Commission
500 North Capitol Street
Washington, D.C. 20549

SEC. AND EXCH. COMM.
N. Y. REGIONAL OFFICE
RECEIVED

MAR 3 - 1975

☐ Moran ☐
☐ Malawsky ☐ Pursuit
☐ Jacob ☐

Wm. Norton

SENDER: Be sure to follow instructions on other side

PLEASE FURNISH SERVICE(S) INDICATED BY CHECKED BLOCK(S)
(Additional charges required for these services)

☐ Show address where delivered

☐ Deliver ONLY to addressee

RECEIPT

Received the numbered article described below

REGISTERED NO.

CERTIFIED NO.
125841

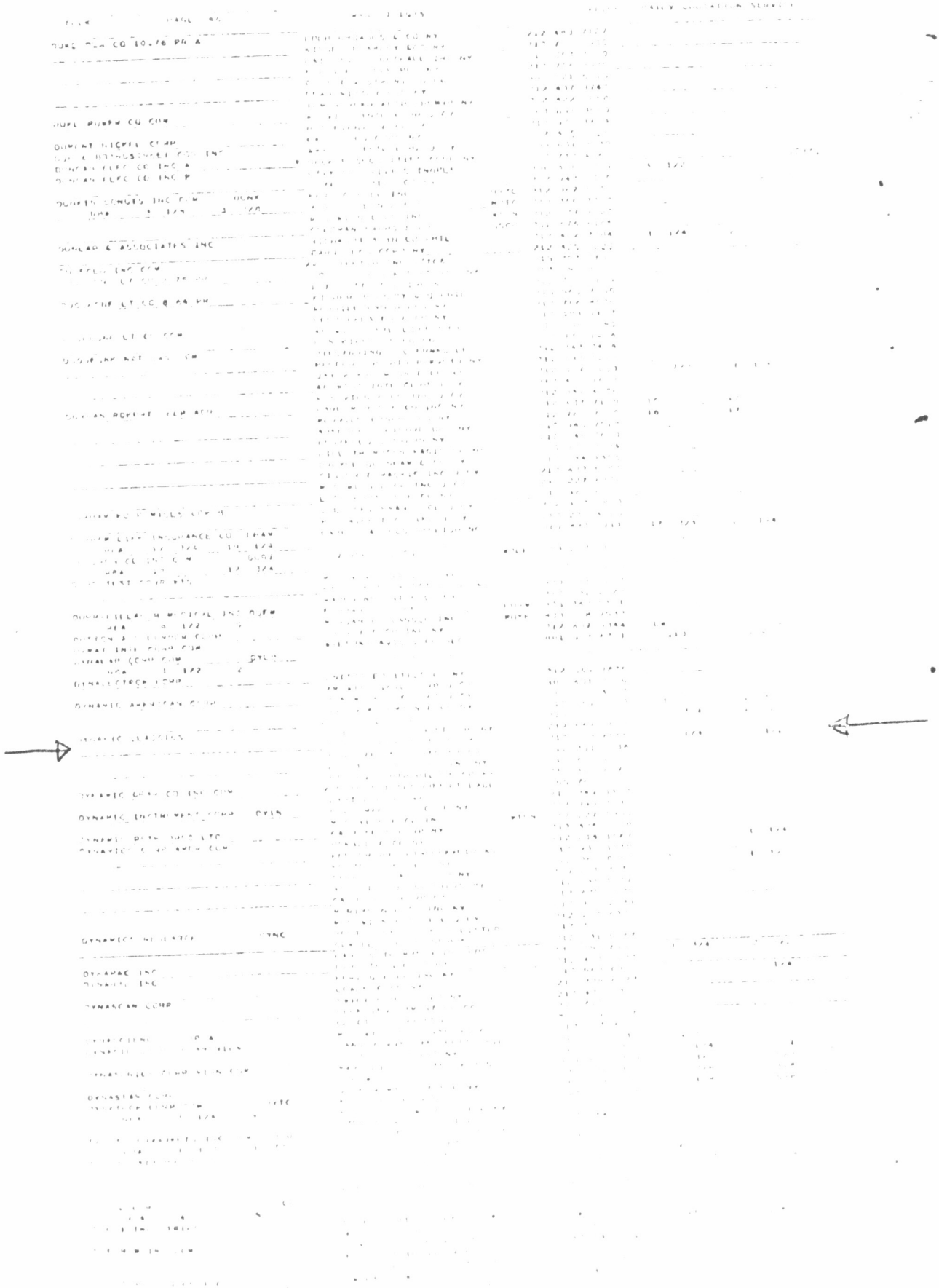
INSURED NO.

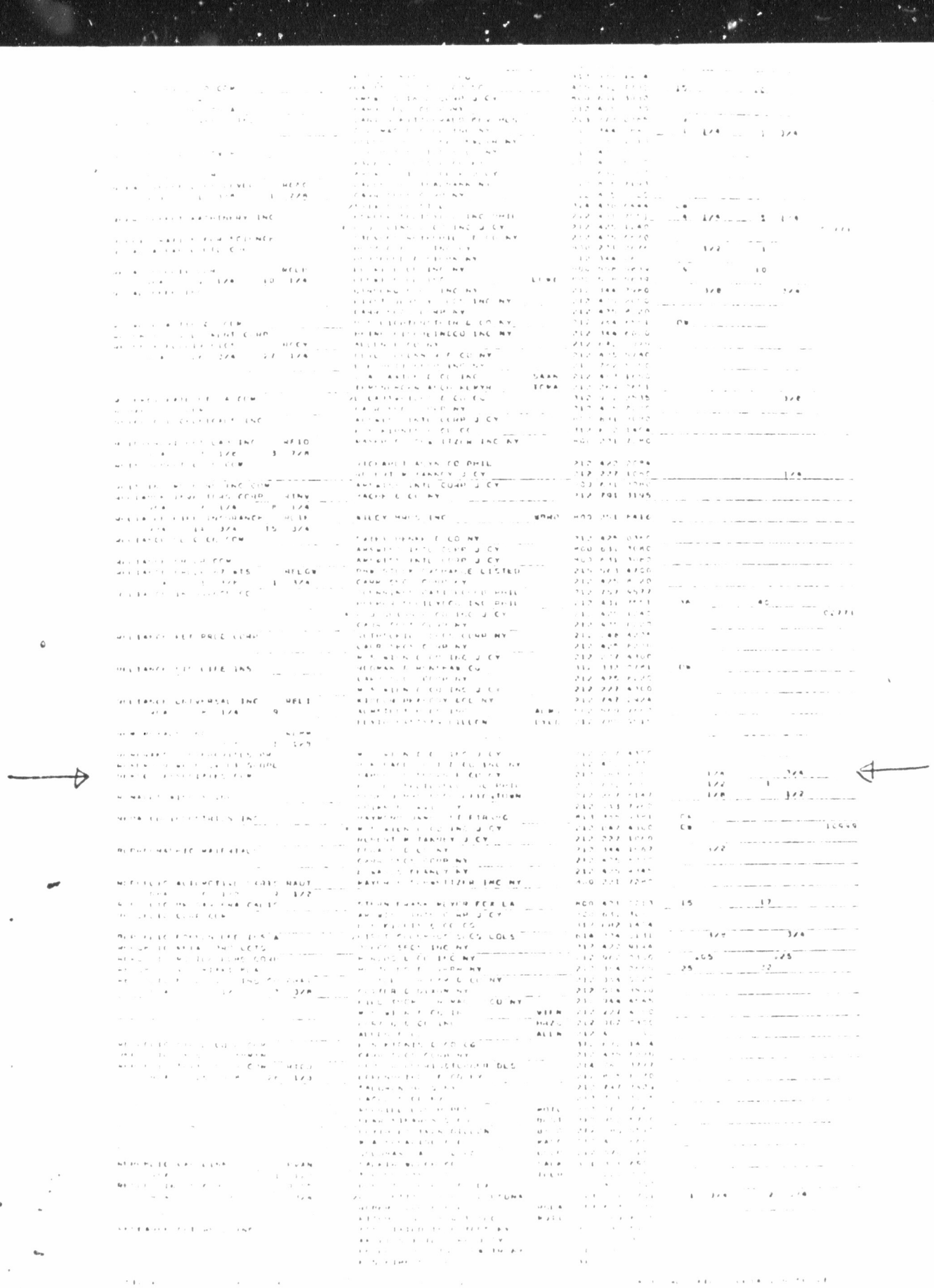
DATE DELIVERED

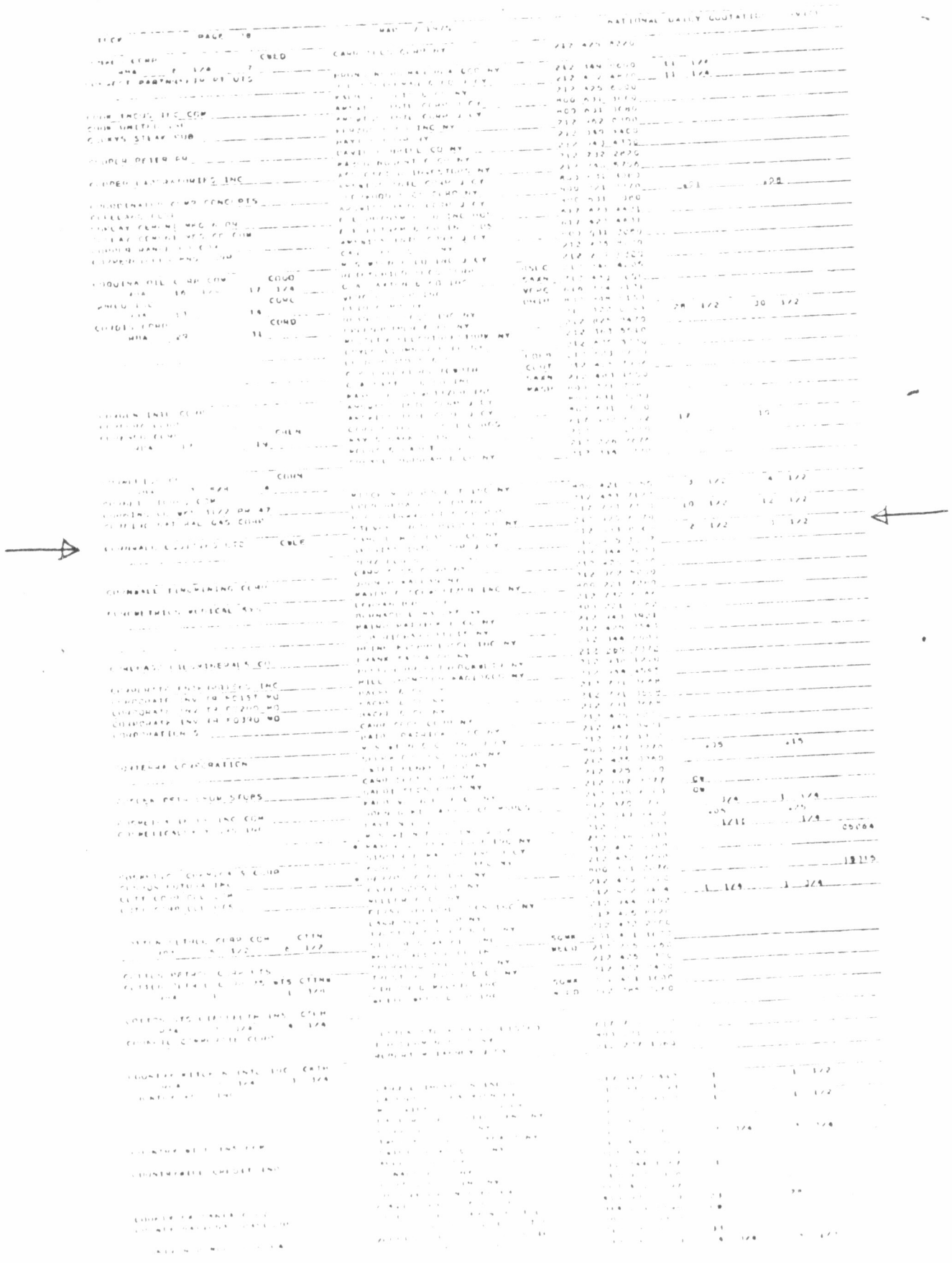
SIGNATURE OR NAME OF ADDRESSEE (Must always be filled in)

SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

SHOW WHERE DELIVERED (Only if requested, and fee paid. ZIP Code)







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	W S WIEN & CO INC J CY		212 [illegible]		
	CARR SECS CORP NY		212 [illegible] 8220		
CANADA SOUTHERN PETE	[illegible]		[illegible]		
	UNITED EQUITIES CO NY		212 249 [illegible]		
	PITFIELD MACKAYECO INC NY		212 [illegible]		
	[illegible] SECURITIES INC NY		[illegible]		
	[illegible] INC NY		[illegible] 7697		
	SINGER & MACKIE INC J CY		212 422 4000		
	W S WIEN & CO INC J CY		212 227 [illegible]		
	HILL THOMPSON MAGID&CO NY		800 221 3234		
CANADA TUNGSTEN MINING	PITFIELD MACKAYECO INC NY		212 422 [illegible]		
	CARR & CO CORP NY		212 425 8220		
	RICHARDSON SECS INC NY		212 901 [illegible]		
CON CANNORS LTD A COM	W S WIEN & CO INC J CY		212 227 4300		
	CARR SECS CORP NY		212 425 [illegible]		
CON CURTISS WRIGHT	CARR SECS CORP NY		212 425 8220		
CON GAS [illegible] ENERGY [illegible] WTS	PITFIELD MACKAYECO INC NY		212 [illegible]		
CON IMPERIAL EX OP COM	DREXEL BURNHAM & CO NY		212 344 1683		
	PITFIELD MACKAYECO INC NY		212 422 9366		
	DOMINICK SECURITIES NY		212 944 8161		
	WOOD GUNDY INC NY		212 248 [illegible]		
	DOMINICK & DOMINICK NY		212 952 6069		
	OPPENHEIMER & CO NY		212 [illegible]		
	LOEB RHOADES & CO NY		212 483 6300		
CON INDUST GAS & OIL COM	PITFIELD MACKAYECO INC NY		212 422 [illegible]		
	WOOD GUNDY INC NY		212 248 5680		
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	CARR SECS CORP NY		212 425 8220		
	ASSOCIATED INVESTORS NY		212 248 [illegible]		
CANAL BANK TRUST CTFS	HOWARD WEIL L F & CO NY		212 422 3340		
CANANDAIGUA ENTERPRSE COM	ZMONROE SECS INC ROCH		716 [illegible]	1 5/8	2 1/8
	MULLER & CO NY		212 952 9444	1 5/8	2
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	ZMILLER SECS INC SYR		15 422 2293		
CANANDAIGUA WINE CO INC CNDN	SINGER & MACKIE INC	SGMK	201 451 1600		
NBA 4 3/4 5 1/2	MERRILL LYNCH PFS	MOIC	212 766 7750		
CANDEL OIL LTD	PITFIELD MACKAYECO INC NY		212 422 [illegible]		
	SINGER & MACKIE INC J CY		212 422 4000		
	LOEB RHOADES & CO NY		212 483 6100		
CANDEUR FLEISSIG & ASSOC	STEVENS ROTHCHILD & CO NY		212 425 6670		
CANDLER CO CELA	HERZOG & CO INC NY		212 962 0300		1/2
CANDYWYNE CORP	F L AARON & CO INC N Y		212 344 2197		
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	E J ALLAN [illegible] & CO NY		212 964 [illegible]	1	1 1/2
CANNON MILLS CO COM CNON	[illegible] INC NY		212 [illegible]		
NBA 12 7/8 13 3/8	DREXEL BURNHAM & CO NY		212 344 [illegible]		
	CARR SECS CORP NY		212 425 8220		
	MERRILL LYNCH PFS	MOIC	212 766 [illegible]		
CANNON SHOE CO COM	CARR SECS CORP NY		[illegible]		
CANON INC COM	CARL MARKS & CO INC NY		212 437 7100	.66	.70
	W S WIEN & CO INC J CY		212 227 [illegible]		
CANON INC ADR CANNY	YAMAICHI SEC CO NY INC NY		212 432 8600		
NBA 17 1/2 18	DREXEL BURNHAM & CO NY		212 [illegible]		
	DAIWA SECS AMERICA INC NY		212 732 [illegible]		
	ARNHOLD BLEICHROEDER NY		212 943 [illegible]		
	SHIELDS MODEL ROLAND NY		212 785 5400		
	GOLDMAN SACHS & CO NY		212 676 [illegible]		
	CARL MARKS & CO INC	MARS	212 437 7100		
	DONALDSON LUFKIN & J	[illegible]	212 [illegible]		
	NOMURA SECS INTL INC	NMRA	212 [illegible]		
	SHIELDS MODEL ROLAND	SHMR	212 785 5400		
	GOLDMAN SACHS & CO	GSCO	212 676 0145		
	DREXEL BURNHAM & CO	DBDR	212 344 [illegible]		
	MERRILL LYNCH PFS	MOIC	212 766 7820		
	W S WIEN & CO INC	WIEN	212 227 4300		
CANRAD-HANOVIA INC CNRD	AMSWISS INTL CORP J CY		800 631 3080		
NBA 1 1/8 1 1/2	HERZOG & CO INC	HRZG	212 962 0300		
	SINGER & MACKIE INC	SGMK	201 451 1600		
CANTEEN CORP COM	LEHMAN BROS NY		212 732 [illegible]		
	CARR SECS CORP NY		212 425 8220		
	SWIFT HENKE & CO NY		212 425 0360		
CANYON SILVER MINES INC	CARR SECS CORP NY		212 425 8220		
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CANYONLANDS URAN INC COM	ZTYCHE SECS INC FT LEE NJ		212 [illegible]	.02	.05
CAP CORP COM	CARR SECS CORP NY		212 425 8220		
CAPE COD BET MASS	DAYTON HALSEY & CO BOS		617 542 6190		43
CAPE CORAL BANK FLA	CARR SECS CORP NY		800 221 [illegible]	23	
CAPE MAY COUNTY NATL BANK	CARR SECS CORP NY		212 425 8220		
	JOHN J RYAN & CO INC NWRK		212 [illegible]		
	W S WIEN & CO INC J CY		212 227 4300		
CAPEHART CORP COM	AMSWISS INTL CORP J CY		212 425 1067		
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NBA 5 5 3/4					
CAPITAL CORPORATE RESOURC	HOPPER SOLIDAY&CO INC PHIL		212 [illegible]	1/2	1
CAPITAL CORP OF AMER	ELKINS STROUD SUPLEE PHIL		212 925 [illegible]	3/8	5/8
CAPITAL FACILITIES CORP	H A PACE POST & CO INC NY		212 422 [illegible]		
CAPITAL FILM LABS COM CFLM	W S WIEN & CO INC	WIEN	212 227 4300		
NBA 1 1/2 2 1/4					
CAPITAL FIRST CORP	[illegible] INC PHIL		[illegible]	4 1/2	6
	[illegible] PITTS		412 [illegible]		
	CARL MARKS & CO INC NY		212 437 7100		
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	AMSWISS [illegible]		212 425 [illegible]		
	HILL THOMPSON MAGID&CO NY		212 944 [illegible]	1/16	1/8
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	[illegible] NY		[illegible]	.05	.1[illegible]
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CAPITAL [illegible] CPLM					
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	W S WIEN [illegible] J CY		[illegible]		
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	AM [illegible]		[illegible]		
CAPITAL INTL AIRWAYS INC CAIN	[illegible]	[illegible]	[illegible]		
NBA [illegible] 7/8	[illegible]	[illegible]	[illegible]		
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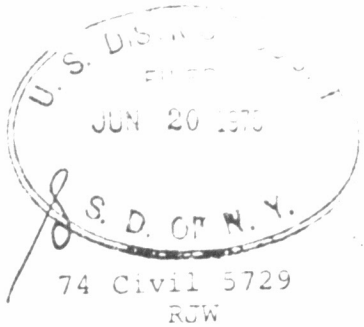
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



SECURITIES & EXCHANGE COMMISSION

Plaintiff,

-against-

SAMUEL H. SLOAN individually and doing business as:
SAMUEL H. SLOAN & CO.

Defendants.

74 Civil 5729
RJW

DEFENDANTS' FIRST INTERROGATORY TO PLAINTIFF

Pursuant to Rule 33 of the Federal Rules of Civil Procedure defendants hereby demand that plaintiff furnish within 30 days of service hereof, separately and fully in writing under oath, an answer to the following interrogatories:

1. State separately each and every act and practice in which plaintiff contends the defendants have engaged, are engaged or are about to engate which constitute violations of Sections 15(c)(2) and 17(a) of the Securities Exchange Act of 1934 and Rules 17 CFR 240.15c2-11 and 17 CFR 240.17a-4 promulgated thereunder.

2. State whether any of the defendants are registered brokers or dealers with the Securities & Exchange Commission

and whether a broker dealer withdrawal request has been filed and the date of said filing.

3. With respect to each and every quotation published in the pink sheets of the National Quotation Bureau Inc. at the request of Samuel H. Sloan & Co. which plaintiff contends was in violation of Rule 17 CFR 240.15c 2-11, state the exact name of the issuer of security, the exact title and class of the security, the quotation published, whether it was a bid or an asked quotation, the date on which the quotation was published, whether the S.E.C. had ever suspended trading in that security and, if so, the dates when the suspension of trading commenced and terminated.

4. With respect to every quotation listed in item three above, state, by reference to the appropriate subsection of Rule 15 c 2-11, the manner in which this quotation was manipulative, fraudulent or deceptive.

5. With respect to every quotation listed in item three above, state the name or names of any brokers or dealers listed in the pink sheets under the same security either on the same date or on the dates immediately following and state whether the plaintiff has commenced either administrative

or injunctive proceedings against said brokers and dealers for alleged violations of Rule 15c 2-11.

6. State the time and dates of all conversations by telephone and in person between Ira Spindler and the defendants and between Thom[illegible]olan and the defendants and state the substance of all such conversations.

7. State the time and date of each conversation by telephone and in person between Jerome Selvers and the defendants or their agents between December 30, 1974 and January 8, 19[illegible] and state the substance of each conversation.

8. State whether plaintiff communicated with the firms of E. L. Aaron & Co., J. W. Weller & Co. and Morton Kominsky regarding the listing in the pink sheets of Continental Dynamics Ltd. which was initiated by the defendants and state the nature of every such communication.

9. State whether sworn testimony was taken by plaintiff with regard to the matters referred to in item eight above and state the time, date and place of such sworn testimony and the name of the person who testified.

10. State the name of each and every security suspended from trading by the plaintiff during 1973, 1974 and 1975 and

the dates of each suspension.

11. State the full name, the residence address and the political party of each commissioner of the Securities & Exchange Commission and the date when appointed.

12. State any business, vacation or employment, other than that of serving as commissioner of each and every commissioner of the Securities & Exchange Commission.

13. State each and every purchase and sale of a security including the date, price and name of the security involved in the purchase and sale and each and every stock market transaction engaged in by each commissioner of the Securities & Exchange Commission during the period in which he has been a commissioner.

14. Describe, in a manner sufficient for a subpoena duces tecum or for production of documents pursuant to Rule 34 of the Federal Rules of Civil Procedure, all documents contained in the records and files of plaintiff including all transcripts, correspondence, memoranda, and work product concerning the examination and investigation by plaintiff of the defendants both prior to and during the course of this lawsuit.

DEFENDANTS' FIRST INTERROGATORY TO PLAINTIFF
continue from page 4.

Dated: June 11, 1975
Lynchburg, Virginia

Samuel H. Sloan
917 Old Trents Ferry Road
Lynchburg, Virginia 24503

(804) 384-1207

To: Securities & Exchange Commission
26 Federal Plaza
New York, New York 10007

H. Marjorie Sloan being duly sworn deposes and says that she is over 21 years of age, is not a party to this action and resides at 917 Old Trents Ferry Road, Lynchburg, Virginia 24503 and that on June 15, 1975 she served the within interrogatory on the Securities & Exchange Commission by mailing a true copy of the same to the designated address for service at 26 Federal Plaza, New York, New York 1000.

H. Marjorie Sloan

SWORN TO BEFORE ME THIS
DAY OF JUNE, 1975

NOTARY PUBLIC

My commission expires: 2/7/76

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION Plaintiff, -against- SAMUEL H. SLOAN, Individually and d/b/a SAMUEL H. SLOAN & CO. Defendants.	74 Civil 5729 (RJW) REPLY AFFIDAVIT

Commonwealth of V[illegible]inia
City of Lynchbur[illegible]

Samuel H. Sloan, being duly sworn, deposes and says:

1. Because of certain statements made in the memorandum of the S.E.C. in opposition to my motion, I believe that this reply affidavit is appropriate.

2. It seems that the principal argument advanced by the S.E.C. is that the decision of April 28, 1975, does not render this case moot because 1) Sloan has filed a petition for review with the United States Court of Appeals with respect to that decision and 2) in view of Sloans "flagrant and longcontinued violations of federal securities laws" there is a reasonable likelyhood that he will violate these laws in the future even though he is presently barred from the securities industry.

3. I assume that the real argument of the S.E.C. on this point is that the Court of Appeals may, when it decides the petition for review, vacate the order of April 28, 1975, and order that Sloan be re-instated as a broker dealer

and, if this occurs, the S.E.C. will want to have injunctive relief. In connection with this argument I wish to advise the court that the record in that petition for review, which has recently been filed in the Court of Appeals by the S.E.C., is approximately 1250 pages long. Since the record is on file in the Court of Appeals in New York and since I am situated in Lynchburg, Virginia, it is not possible for me to read the record. The S.E.C. has refused to provide me with a copy of the record. It is apparent that the record contains much material which I have not seen or read. Obviously, I cannot write my brief until I have studied the record and I do not believe I will be able to do this until sometime in September. In addition, I have been advised by a clerk that the Court of Appeals gives agency proceedings of this nature the lowest priority. From this I conclude that it will be several months between the time that final briefs are filed and the time the case will be argued. This leads me to believe that it will be somewhere between six months and a year before the Court of Appeals will render its decision in the petition for review.

4. I assume that if my motion to dismiss is denied, the case will go to trial fairly promptly after discovery proceedings are completed. Therefore, a trial of the instant action will take place prior to the time the Court of Appeals renders a decision or the petition for review. I believe that this is entirely inappropriate and that the district court should dismiss the complaint for reasons given in my main brief.

5. It seems to be the position of the S.E.C. that my motion has been foreclosed by decisions of the Court of Appeals. It is true that the motion for contempt was denied by the Court of Appeals (see answering brief p. 3). However, in opposing that motion, the S.E.C. argued that only the district court judge had jurisdiction to entertain that motion and cited statutory authority on that point. The Court of Appeals denied the motion for contempt without opinion. The decision of the Court of Appeals in no way forecloses the authority of this court to decide the motion presented here particularly since the motion before the Court of Appeals was made in connection with another proceeding; i.e., Sloan v S.E.C. et al 75-4087.

6. In addition, the fact that the Court of Appeals denied Sloan's motion for a stay (answering brief p. 9) has no bearing on this motion since the Court of Appeals expressed no opinion on the motion and since there can be no final decision on the arguments advanced therein until the appeal is heard on the merits. In addition, it should be noted that the defendant has had no prior opportunity to argue in this court that the injunction fails to comply with Rule 65 F.R. Civ. P. because, on January 17, 1975, the district court signed the order of injunction before I was given the opportunity to read it.

7. I also wish to point out that the statement that the district court has no jurisdiction to vacate the order of injunction is without basis in law. In this case,

a new state of facts has arisen, to wit, Sloan has been barred from the securities industry and the broker dealer registration of Sloan & Co. has been revoked. Therefore, it is proper for the court to reassess the situation and to make new findings if appropriate. It is submitted that it is always within the jurisdiction of the district court to vacate its own injunction upon appropriate showing.

8. Curiously, the case upon which the S.E.C. claims authority for the proposition that this court has no jurisdiction is S.E.C. v Coffey ____U.S.____, 95 S. Ct. 826 (1975). However, that decision is nothing more than a denial, without opinion, of the petition of the S.E.C. for a writ of certrorari. This is a strange case for the S.E.C. to cite because the lower court decision, S.E.C. v Coffey 493 F. 2d 1304 (6th Cir. 1974), fully supports the position I have taken in this case. That decision stated:

"However, before an injunction will issue against a particular party in his personal capacity, it must be shown that he personally is about to commit or is committing a securities law offense. The statutory authority of the S.E.C. alone requires such a rule. See §20(b) of the 1933 Act, 15 U.S.C. §77t(b), and §21(e) of the 1934 Act, 15 U.S.C. §78u(e). In this case, all challenged activities have ended, so that the S.E.C. has not based its request for relief on the assertion that defendants are "about to" commit a violation. Unless Appellants themselves violated the securities laws, there is con-

sequently no basis to enjoin them for fear they will commit "further" violations. See S.E.C.v National Bankers Life Ins. Co., 324 F. Supp. 189, 197 (N.D. Tex. 1971), 334 F. Supp. 444, aff'd, 448 F. 2d 652 (5th Cir. 1971)."

9. Clearly, since I have been barred from the securities industry, the challenged activities have ended. In the next paragraph of its decision, the Coffey court stated that it was "disturbed" by the S.E.C.'s tacit suggestions and further stated that:

"Such an arbitrary procedure [that advocated by the S.E.C.] would also deny named defendants basic constitutional rights in subsequent proceedings since a personal injunction would be enforceable through contempt proceedings even if a future violation were alleged that was based on activity wholly apart from the individuals corporate relationship."

10. It is submitted that this citation is appropriate here since any future violations by Sloan and Sloan & Co. "federal securities laws" could not possibly be of a type that form the basis of the S.E.C.'s complaint.

11. In Coffey, the Sixth Circuit adopted the rule in this circuit established by Lanza v Drexel & Co. 479 F. 2d 1277, 1306 (2d Cir. 1973) (en banc) which held that in actions based upon violations of Rule 10b-5, there must be a showing that the defendants acted "in willful or reckless disregard for the truth." "The Sixth Circuit held that this standard applied not only to private litigation but also to S.E.C. injunctive actions and stated:

"If the S.E.C. can prove that the alleged omissions represent facts which were known or should have been known by Coffey.....then Coffey may have violated Rule

10b-5(2). In addition to these factors, however, it is essential that the S.E.C. show that Coffey's inaction was in 'wilful or reckless disregard for the truth.'"

12. It should be noted that in Coffey and in many other cases, including litigation involving the defendants, the S.E.C. has argued that under S.E.C. v Capital Gains Research Bureau, Inc. 375 U.S. 180 (1963), the S.E.C. is required to adhere to a lower standard of proof than that required of private litigants. However, S.E.C. v Captial Gains Research Bureau made no such holding. On several occasions including Coffey, the S.E.C. has urged the adoption of a rule that it was entitled to a lower standard of proof and, in all cases, this argument has been rejected.

13. Finally the bald faced assertions contained in the memorandum of the S.E.C., which are without support by evidence, cannot go unchallenged. In its answering brief, p. 7, the S.E.C. states:

"the personnel who participated in the preparation of the opinion for the Commission acted in good faith and without knowledge of this Courts' pre-trial order and were unaware that the publication of this already public information could potentially conflict with a directive of this court."

14. This statement is, of course, unsupported by an affidavit and it is typical of the arrogant attitude of the S.E.C. that it expects this court to accept this representation even though it is unsupported by evidence.

15. Since the S.E.C. is correct in its contention that the defendant seeks to have sanctions imposed for past conduct which sounds in criminal contempt, it is

submitted that this court should schedule a hearing to determine who is responsible for this wrongful conduct and what remedies should be imposed on such person or persons. However, regardless of what findings the court may wake in connection with such a hearing, there is no question that the complaint of the S.E.C. should be dismissed. Furthermore, in Aleyska Pipeline Serv. v Wilderness Soc ____U.S.____ 44 L. Ed 2d 141, 154, the Supreme Court on May 12, 1975, affirmed the rule that reasonable attorneys fees may be assessed for a wilful violation of a court order or for bad faith or oppressive litigation practices. There the court stated:

> "Also, a court may assess attorneys fees for the 'wilful disobediance of a court order....as part of the fine to be levied on the defendant. Toledo Scale Co. v Computing Scale Co. 261 U.S. 399, 426-428 (1923).' Fleischmann Distilling Corp. v Maier Brewing Co. 386 U.S. 714, 718 (1967); or when the losing party has 'acted in bad faith, vexatiously, wantonly or for opressive reasons....' F.D. Rich Co. Inc. v Industrial Lumber Co., Inc. 417 U.S. 116, 129, (1974); (citing Vaughn v Atkinson 369 U.S. 527 (1962)); cf. Universal Oil Products Co. v Root Refining Co. 328 U.S. 575, 580 (1946)."

16. In this case the S.E.C. has acted not only in wilful disobedience of a court order but vexatiously, wantonly, and for opressive reasons. Therefore, this court should dismiss the complaint and award costs and reasonable attorneys fees to the defendant, pro se.

SAMUEL H. SLOAN

Sworn to before me this 7th
day of July, 1975

NOTARY PUBLIC
My commission expires 7/1/77

M. Marjorie Sloan, being duly sworn, deposes and says that she is not a party to this action, is over 21 years of age and resides at 917 Old Trents Ferry Road, Lynchburg, Virginia, 24503 and on July 7, 1975, she served the within affidavit by mailing a true copy of the same to:

Securities & Exchange Commission
26 Federal Plaza
New York, N. Y. 10007

M. Marjorie Sloan

Sworn to before me this 7th
day of July, 1975

NOTARY PUBLIC
My Commission expires June 7, 1977

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION

Plaintiff,

-against-

SAMUEL H. SLOAN, Individually and d/b/a SAMUEL H. SLOAN & CO.

Defendants.

75 Civil [illegible] (R.J.)

NOTICE OF MOTION

S I R S:

PLEASE TAKE NOTICE that upon the annexed affidavit of Douglas P. Jacobs, Esq., duly sworn to on the 14th day of July 1975, and upon all of the pleadings and proceedings heretofore had herein, the undersigned will move this Court on July 29, 1975, or as soon thereafter as counsel may be heard, for an Order staying discovery by defendants pending the outcome of defendants' appeal of this Court's Order of Injunction entered herein on January 20, 1975 or, in the alternative, for a protective order pursuant to Rule 26(c) of the Federal Rules of Civil Procedure directing that the questions propounded by defendants in defendants' First Interrogatory to Plaintiff need not be answered by plaintiff.

Dated: New York, New York
July 14, 1975

Respectfully submitted,

WILLIAM D. HORAN
Regional Administrator

Attorney for Plaintiff
SECURITIES AND EXCHANGE COMMISSION
New York Regional Office
26 Federal Plaza
New York, New York 10007
Telephone No.: (212) 264-1635

To:
Samuel H. Sloan
c/o 917 Old Trent's Ferry Road
Lynchburg, Virginia 24503

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION Plaintiff, -against- SAMUEL H. SLOAN, Individually and d/b/a SAMUEL H. SLOAN & CO. Defendants.	74 Civil 5729 (RJW) AFFIDAVIT IN SUPPORT OF PLAINTIFF'S MOTION FOR A STAY OF DISCOVERY BY DEFENDANTS PENDING THE OUTCOME OF DEFENDANTS' APPEAL OR, IN THE ALTERNATIVE, FOR A PROTECTIVE ORDER PURSUANT TO RULE 26(c) OF THE FEDERAL RULES OF CIVIL PROCEDURE

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

DOUGLAS P. JACOBS, being duly sworn, deposes and says:

INTRODUCTION

1. I am an attorney in the New York Regional Office of plaintiff Securities and Exchange Commission ("Commission).

2. On December 30, 1974 the Commission commenced this action seeking to enjoin defendants Samuel H. Sloan individually and doing business as Samuel H. Sloan & Co. from further violations of Sections 15(c)(2) and 17(a) of the Securities Exchange Act of 1934, 15 U.S.C. 78o(c)(2) and 78q(a), and Rules 15c2-11 and 17a-4 thereunder, 17 C.F.R. 240.15c2-11 and 240.17a-4. On that date, this Court temporarily restrained the defendants from violating these sections and rules. After an evidentiary hearing, this Court, on January 17, 1975, endorsed an Order of Injunction which preliminarily enjoined the defendants from violating the above sections and rules, and ordered defendants, inter alia, to permit immediate examination of defendants' books and records by Commission representatives. On January 21, 1975 the defendants filed a notice of

appeal of the Court's Order of Injunction to the United States Court of Appeals for the Second Circuit. SEC v. Sloan (Docket No. 75-7056). On February 13, 1975, the Court of Appeals denied defendants' motion for a stay of the injunction pending appeal.

NATURE AND BASIS FOR THIS APPLICATION

3. I make this affidavit in support of plaintiff Commission's motion for a stay of discovery by defendants pending the outcome of defendants' appeal of this Court's Order of Injunction entered herein or, in the alternative, for a protective order pursuan to Rule 26(c) of the Federal Rules of Civil Procedure.

4. As stated above, on January 21, 1975, the defendants filed a notice of appeal of the Court's Order of Injunction to the United States Court of Appeals for the Second Circuit, SEC v. Sloan, Docket No. 75-7056, which is still pending. In view of the fact, as the Court has previously stated (see page 84 of the transcribed trial record), that "Sloan's only defense is that the foregoing statutes and regulations are so vague as to be unconstitutional," it appears that the instant case presents only issues of law; thus a stay of defendants' discovery pending the outcome of defendants' appeal would be warranted under the circumstances of this case. Moreover, as will be discussed below, defendants' purpose for conducting discovery is simply to harass, annoy and oppress the Commission, which justifies a protective order being granted to the Commission providing that defendants' discovery not be had. Rule 26(c) Fed. R. Civ. P.

5. In defendants' First Interrogatory To Plaintiff ("First Interrogatory"), dated June 11, 1975 (a copy of which is annexed hereto as Exhibit 1), defendants' questions 11, 12 and 13 are oppressive and exhibit the defendants' complete lack of good faith, in that said questions are designed to harass and place an unnecessary burden on the Commission's staff. Questions 11, 12 and 13 relate to the private lives of the Commissioners of the Securities and Exchange Commission and are simply not relevant to the issues of the instant proceeding. Moreover, question 10 is also indicative of defendants' bad faith in that this question requests information (the "name of each and every security suspended from trading by the [Commission] during 1973, 1974 and 1975 . . . .") which is not only irrelevant to the instant case, but is also a matter of public record, and is of a nature that does not appear reasonably calculated to lead to the discovery of admissible evidence within the purview of Rule 26 of the Federal Rules of Civil Procedure.

6. With respect to questions 1 through 9, propounded in defendants First Interrogatory, it is respectfully submitted that the Complaint and affidavits previously submitted herein by plaintiff Commission, including the testimony by members of the Commission's staff during the evidentiary hearing in this matter, contain information sufficient to answer questions 1, 2, 3, 4, and 6 and that questions 5, 7, 8 and 9 demonstrate, once again, that defendants' manner of discovery is being conducted in bad faith and in a manner designed to harass, annoy and oppress the plaintiff Commission, as these questions are not only irrelevant but also

do not appear reasonably calculated to lead to the discovery of admissible evidence within the purview of Rule 26 of the Federal Rules of Civil Procedure.

7. With respect to question 14, it is respectfully submitted that the records and files of plaintiff Commission pertaining to this action are part of the work product prepared by attorneys for plaintiff Commission and are therefore subject to discovery by defendants "only upon a showing that the [defendants have] substantial need of the materials in the preparation of [their] case . . . . " Rule 26(b)(3), Fed. R. Civ. P. It is clear that the defendants have not, under the facts and circumstances of this case, shown a "substantial need" for these documents. In fact, since defendants' only defense in the instant case is that the Securities Exchange Act of 1934 and the rules and regulations thereunder are so vague as to be unconstitutional, it is evident that defendants' request for these documents are not calculated to lead to the discovery of admissible evidence but rather to harass, annoy and oppress the plaintiff Commission.

8. In light of the foregoing, it is respectfully urged that defendants' discovery be stayed pending the outcome of defendants' appeal from the order of preliminary injunction granted by this Court on January 17, 1975 or, in the alternative, that this Court grant plaintiff Commission a protective order, pursuant to Rule 26(c), Fed. R. Civ. P., with respect to questions 1 through 14 of defendants First Interrogatory which provides that the plaintiff Commission need not answer said questions.

Douglas P. Jacobs

DOUGLAS P. JACOBS

Sworn to before me this
14th day of July, 1975.

NOTARY PUBLIC

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES & EXCHANGE COMMISSION

Plaintiff,

-against-

SAMUEL H. SLOAN individually and doing business as:
SAMUEL H. SLOAN & CO.

Defendants.

74 Civil 5729
RJW

DEFENDANTS' FIRST INTERROGATORY TO PLAINTIFF

Pursuant to Rule 33 of the Federal Rules of Civil Procedure defendants hereby demand that plaintiff furnish within 30 days of service hereof, separately and fully in writing under oath, an answer to the following interrogatories:

1. State separately each and every act and practice in which plaintiff contends the defendants have engaged, are engage or are about to engate which constitute violations of Sections 15(c)(2) and 17(a) of the Securities Exchange Act of 1934 and Rules 17 CFR 240.15c2-11 and 17 CFR 240.17a-4 promulgated thereunder.

2. State whether any of the defendants are registered brokers or dealers with the Securities & Exchange Commission

and whether a broker dealer withdrawal request has been filed and the date of said filing.

3. With respect to each and every quotation published in the pink sheets of the National Quotation Bureau Inc. at the request of Samuel H. Sloan & Co. which plaintiff contends was in violation of Rule 17 CFR 240.15c 2-11, state the exact name of the issuer of security, the exact title and class of the security, the quotation published, whether it was a bid or an asked quotation, the date on which the quotation was published, whether the S.E.C. had ever suspended trading in that security and, if so, the dates when the suspension of trading commenced and terminated.

4. With respect to every quotation listed in item three above, state, by reference to the appropriate subsection of Rule 15 c 2-11, the manner in which this quotation was manipulative, fraudulent or deceptive.

5. With respect to every quotation listed in item three above, state the name or names of any brokers or dealers listed in the pink sheets under the same security either on the same date or on the dates immediately following and state whether the plaintiff has commenced either administrati

or injunctive proceedings against said brokers and dealers for alleged violations of Rule 15c 2-11.

6. State the time and dates of all conversations by telephone and in person between Ira Spindler and the defendants and between Thomas Dolan and the defendants and state the substance of all such conversations.

7. State the time and date of each conversation by telephone and in person between Jerome Selvers and the defendants or their agents between December 30, 1974 and January 8, 1975 and state the substance of each conversation.

8. State whether plaintiff communicated with the firms of E. L. Aaron & Co., J. W. Weller & Co. and Morton Kominsky regarding the listing in the pink sheets of Continental Dynamics Ltd. which was initiated by the defendants and state the nature of every such communication.

9. State whether sworn testimony was taken by plaintiff with regard to the matters referred to in item eight above and state the time, date and place of such sworn testimony and the name of the person who testified.

10. State the name of each and every security [illegible] from trading by the plaintiff during 1973, 1974 and 1975 [illegible]

the dates of each suspension.

11. State the full name, the residence address and the political party of each commissioner of the Securities & Exchange Commission and the date when appointed.

12. State any business, vacation or employment, other than that of serving as commissioner of each and every commissioner of the Securities & Exchange Commission.

13. State each and every purchase and sale of a security including the date, price and name of the security involved in the purchase and sale and each and every stock market transaction engaged in by each commissioner of the Securities & Exchange Commission during the period in which he has been a commissioner.

14. Describe, in a manner sufficient for a subpoena duces tecum or for production of documents pursuant to Rule 34 of the Federal Rules of Civil Procedure, all documents contained in the records and files of plaintiff including all transcripts, correspondence, memoranda, and work product concerning the examination and investigation by plaintiff of the defendants both prior to and during the course of this lawsuit.

SUPPLEMENTAL FIRST INTERROGATORY TO PLAINTIFF
Continue from page 4.

Dated: June 11, 1975
Lynchburg, Virginia

Samuel H. Sloan

Samuel H. Sloan
917 Old Trents Ferry Road
Lynchburg, Virginia 24503

(804) 384-1207

To: Securities & Exchange Commission
26 Federal Plaza
New York, New York 10007

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION Plaintiff, -against- SAMUEL H. SLOAN, Individually and d/b/a SAMUEL H. SLOAN & CO. Defendants.	74 Civil 5729 (RJW) AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

DOUGLAS P. JACOBS, being duly sworn, deposes and says:

1. I am an attorney employed by the United States Securities and Exchange Commission in its New York Regional Office.

2. On July 14, 1975 I served a copy of the within Notice of Motion and Affidavit in Support of Plaintiff's Motion for a Stay of Discovery by Defendants Pending the Outcome of Defendants' Appeal or, in the Alternative, for a Protective Order Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure dated July 14, 1975 by depositing a true copy of same in a prepaid envelope in an official depository under the exclusive care and custody of the United States Postal Service addressed to the following location:

Samuel H. Sloan
c/o 947 Old Trent's Ferry Road
Lynchburg, Virginia 24503

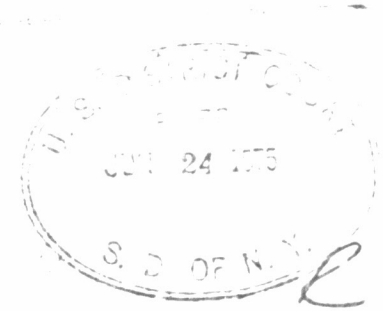
Douglas P. Jacobs
DOUGLAS P. JACOBS

Sworn to before me this
14th day of July, 1975.

Vera B. Gaskin
NOTARY PUBLIC

VERA B. GASKIN
Notary Public, State of New York
No. 24-4504176
Qualified in Queens County
Commission Expires March 30, 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



SECURITIES & EXCHANGE COMMISSION

Plaintiff,

-against-

74 Civil 5729
RJW

SAMUEL H. SLOAN, individually and d/b/a
SAMUEL H. SLOAN & CO.

NOTICE OF MOTION

Defendants.

PLEASE TAKE NOTICE that upon the annexed affidavit of Samuel H. Sloan sworn to the day of June, 1975, the exhibits attached thereto and the accompanying memorandum of law the undersigned will move this court on the day of June, 1975 for an order (1) vacating the injunction entered in this action on January 18, 1975 on the grounds that the injunction fails to comply with Rule 65 F.R. Civ. P. (2) dismissing the complaint on the grounds that the complaint fails to state a claim on which relief can be granted, the plaintiff has wilfully disobeyed an order of this court, and this action has become moot and (3) holding in contempt of court the Securities & Exchange Commission and commissioners Ray Garrett, Jr. , Philip A. Loomis, Jr., John R. Evans, A. A. Sommer, Jr., Irving M. Pollack and attorneys George A.

Fitzsimmons, the secretary of the Securities & Exchange Commission, and William Nortman, Thomas L. Taylor, III and Paul Gonson, and disqualifying them from appearing as counsel in this proceeding and barring them from the practice of law in this court on the grounds that on May 5, 1975 the above named individuals caused to be issued to the press and to the public a litigation release concerning this lawsuit in willful disobedience of an order of this court of December 30, 1974 and in violation of legal ethics and the strictures set down by the American Bar Association.

Dated: Lynchburg, Virginia
June 11, 1975

Yours, etc.,

Samuel H. Sloan
917 Old Trents Ferry Road
Lynchburg, Virginia 24503

(804) 384-1207

To: Securities & Exchange Commission
Ray Garrett, Jr.
Philip A. Loomis, Jr.
John R. Evans
A. A. Sommer, Jr.
Irving M. Pollack
George A. Fitzsimmons
Paul Gonson
Thomas L. Taylor, III
500 N. Capitol Street
Washington, D.C. 20549

William Nortman
Securities & Exchange Commission
26 Federal Plaza
New York, N. Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES & EXCHANGE COMMISSION

Plaintiff,

-against-

SAMUEL H. SLOAN, individually and d/b/a SAMUEL H. SLOAN & CO.

Defendants.

74 Civil 5729
RJW

AFFIDAVIT IN SUPPORT OF MOTION

COMMONWEALTH OF VIRGINIA
CITY OF LYNCHBURG] SS:S

Samuel H. Sloan, being duly sworn, deposes and says:

1. I make this affidavit in support of a motion for an order (1) vacating the injunction entered in this action on January 18, 1975 on the grounds that the injunction fails to comply with Rule 65 F.R. Civ.P. (2) dismissing the complaint on the grounds that the complaint fails to state a claim on which relief can be granted, the plaintiff has wilfully disobeyed an order of this court, and this action has become moot and (3) holding in contempt of court the Securities & Exchange Commission and commissioners Ray Garrett, Jr., Philip A. Loomis, Jr., John R. Evans, A. A. Sommer, Jr., Irving M. Pollack and attorneys George A. Fitzsimmons, the secretary of the Securities & Exchange Commission, and William Nortman, Thomas L. Taylor, III and Paul Gonson, and disqualifying them from appearing as counsel in this proceeding and barring them from the practice of law in this court on the grounds that on May 5, 1975 the above named individuals caused to be issued to the press and to the public a litigation release concerning this lawsuit in willful

disobedience of an order of this court of December 30, 1974, and in violation of legal ethics and the strictures set down by the American Bar Association.

2. This action was commenced on December 30, 1974. On that afternoon a conference was held in the chambers of Judge Ward pursuant to a motion by the S.E.C. for a temporary restraining order. At the outset I requested that Judge Ward order the S.E.C. not to issue any litigation releases or to make any public statements regarding that lawsuit. Judge Ward granted my request over the vehement opposition of counsel for the S.E.C. Copies of selected pages of the transcript of that conference are attached hereto and marked Exhibit A. The full transcript is available to this court since it can be found in the original record of that proceeding which has been filed in this court under the docket number 75-7056.

3. Initially, the S.E.C. did comply with Judge Ward's order because no mention was made of that injunctive proceeding in the S.E.C. news digest nor was it reported in the Wall Street Journal. This was the first time, to my knowledge, that this had occurred. The S.E.C. routinely publishes a litigation release whenever it files a case in court or whenever it is victorious in any judicial proceeding. However, the S.E.C. never issues a litigation release

when it suffers a legal setback or when it is named as a defendant in a lawsuit or even when the litigation in which it is victorious is appealed.

4. However, on May 5, 1975 the S.E.C. published a litigation release in the S.E.C. News Digest which publicized the injunctive proceeding before Judge Ward. This litigation release clearly violates Judge Ward's order. A copy of the relevant page of the S.E.C. News Digest is attached hereto and marked Exhibit B. Also attached and marked as Exhibit C are pages one and three of the same S.E.C. News Digest. Page three publicizes several court proceedings including the entry of an injunctive order, a criminal indictment involving seven defendants, the filing of a complaint in federal court, and the plea and sentencing of three individuals who were defendants in a criminal case in Los Angeles, California.

5. It is submitted that these press or litigation releases are a blatant violation of the canons of legal ethics. It should be noted that litigation releases of the same quality and character are issued every business day by the S.E.C. The copy of the S.E.C. News Digest in question is typical of those published daily by the S.E.C. However, the S.E.C. News Digest contains only summaries of the actual litigation releases issued by the S.E.C. It can be seen that each matter referred to in page 3 of Exhibit C is followed by reference such as (LR-6862). This reference means that the text of the full release can be found in Litigation Release number 6862. In Exhibit B it can be seen that the statement con-

cerning the proceeding now before this court is followed by the reference (Rel. 34-11376). This means "Securities Exchange Act of 1934 Rel. No. 11376." It can be seen from Exhibit B in the companion motion for a stay and for various other relief that the decision of the S.E.C. took the form of a press release. In fact, this decision was released to the press on April 28, 1975 or five days before I received it. However, the press did not publicize the original release apparently preferring the summary which was later to be found in the S.E.C. News Digest.

6. I did not learn of the decision of the S.E.C. until I received it by certified mail on Saturday, May 3, 1975. On May 1, 1975 I spoke at length with the S.E.C. staff attorney, Thomas L. Taylor, III but no mention of the decision of the commissioners was made by Mr. Taylor at that time.

7. On Tuesday, May 6, 1975 Mr. Taylor called me and stated, among other things, that the S.E.C. had an obligation to the public to issue a litigation release concerning the decision of the Commissioners. At about 4:00 P.M. on the same day, I received a call from a staff reporter of the Wall Street Journal who asked me for my response to the litigation release just issued by the S.E.C. I felt obliged to reply. A copy of the resulting article in the Wall Street Journal is attached hereto and marked Exhibit D.

8. The immediate result of the article in the Wall Street Journal was that the National Quotation Bureau, Inc. cancelled my subscription to the pink sheets even though my subscription was paid in advance until July 1, 1975. The National Quotation Bureau, Inc. only accepts registered broker dealers as subscribers to the pink sheets. Because my subscription was cancelled, the National Quotation Bureau, Inc. will not publish my listings in the pink sheets and it will not send me the editions of the pink sheets I am entitled to receive by virtue of my subscription. Since my sole source of income for the past five years has been from buying and selling secerities listed in the pink sheets, I am no longer able to make a living in my chosen occupation. Clearly, the actions of the respondents to this proceeding have already resulted in irreparable harm to me.

9. Upon information and belief. on May 6, 1975, in an address to the 12th annual meeting of the Society for Business Writers, Ray Garrett, Jr., Chairman of the S.E.C., stated that the purpose for which the S.E.C. commences injunctive proceedings is to damage the reputation of business leaders. A copy of an article in the New York Times for May 7, 1975 is attached hereto and marked Exhibit E. A copy of the full text of Commissioner Garrett's speech is attached hereto and marked Exhibit F. Mr. Garrett's speech was concerned with a variety of other topics including bribery, the Watergate, the " abysmal ignorance of teachers at all levels," the quality of news reporting on television, the recent bombing of the Denver office of the S.E.C., the fact that the

S.E.C. has make many people "confused and nervous" because Mr. Garrett and his colleagues "speak, to a degree, with forked tongue," and the "harassment" of the S.E.C. by individuals seeking to take advantage of the Freedom of Information Act.

10. Recently, the S.E.C. has become increasingly bold and has attacked the largest American corporations. The securities in International Business Machine Corporation and American Telephone and Telegraph have been suspended from trading at times by the S.E.C. Recently, the S.E.C. filed suit against seven major corporations. Most notably, the S.E.C. sued Gulf Oil Corporation and Northrop Corporation for failing to disclose in 10-K reports filed with the S.E.C. the existance of slush funds intended to be used as bribes to officials in foreign countries. These lawsuits, all of which resulted in instantaneous consent decrees, generated a tremendous amount of publicity for the S.E.C. at the expense of the named defendants. Copies of representative samplings of newspaper articles are attached hereto and marked Exhibit G.

11. It can be seen from these newspaper articles that, as a result, Gulf Oil Corporation has been given 48 hours to publically clarify whether Venezuelan public or private officials have been the objects of or participated in the bribery reported by the S.E.C. If it does not do so, Gulf Oil Corporation faces expulsion from Venezuela. Northrop Corporation is facing similar difficulties. It can be easily seen that what is involved here is not millions but billions of dollars in future U.S. revenues.

12. All five Securities & Exchange Commissioners are members of the bar although perhaps not of the bar of this court. In addition, the Secretary of the Securities & Exchange Commission, George A. Fitzsimmons, is an attorney. It should be apparent that all of these attorneys are habitually violating the canons of legal ethics on a grand scale. It should also be obvious that they are well aware of the impropriety of their own acts having been so warned by Judge Ward. The petitioner and countless defendants to S.E.C. injunctive and enforcement actions have suffered irreparable harm particularly because of the use by the attorneys in question of the "litigation release" which appears to be the principle whereapon utilized by the S.E.C. to crush opposition. The only practical way to keep this from occurring in the future, at least relative to actions brought in this court, is to bar all of the commissioners and their secretary and counsel from the practice of law in this court. In fact, there is nothing else this court can do. Mere disqualification from one proceeding is not enough, because, as the instant case shows the S.E.C. can always start a new lawsuit and issue a new litigation release.

13. With respect to the motions for contempt and disqualification, essentially the same motion has been made in the United States Court of Appeals for the Second Circuit in a petition for review of the administrative order of the S.E.C. That original proceeding in the Court of Appeals is entitled Sloan v S.E.C. U.S.C.A. docket no. 75-4087. In its opposing papers, the S.E.C. has argued that only Judge Ward has the jurisdiction to entertain the motion for contempt. With respect to the other parts of this

motion, the court is respectfully referred to the accompanying memorandum of law and to the decision and order of the S.E.C. a copy of which is attached hereto and marked exhibit H.

WHEREFORE, the defendant prays that this motion be granted.

Samuel H. Sloan
917 Old Trents Ferry Road
Lynchburg, Virginia 24503

(804) 384-1207

SWORN TO BEFORE ME this 13 day

of June, 1975

NOTARY PUBLIC

My Commission expires March 14, 1977

continually violating Rule 15(c)2-11.

The Commission sent to Mr. Sloan a letter on December 19, 1974, stating, in brief, that he was required to maintain and preserve his books and records in accordance with Commission laws and rules.

In addition, your Honor, the Commission received a letter from Mr. Sloan, dated November 6, 1974, which advises us of his intention not to permit any Commission employee to inspect his books and records absent a search warrant.

THE COURT: I have a recollection of having received a copy of this letter of November 6.

I would note that it would appear from the letter that copies were sent to the United States Court of Appeals for the Second Circuit, re Docket No. 74-1436, and to Judge Griesa of this court re 74 Civil 2792, as well as to myself and to Thomas Taylor, Esquire, Office of General Counsel, Securities and Exchange Commission.

Mr. Sloan, I will hear from you.

MR. SLOAN: First, your Honor, I want to make a request that the Commission be restrained from issuing any press releases or statements to the public with regard to the commencement of this action.

The Commission has the policy of in effect putting

EXHIBIT A

announcements in the Wall Street Journal the next day any time a lawsuit is commenced, and I think this has the effect of causing a person to be deemed guilty before he is proven innocent.

In criminal cases and other cases, the Courts have told litigants not to make any statements to the press, and I think that this would be an appropriate statement at this time.

I have come into court almost in a deliberate effort to challenge the constitutionality of various rules and provisions under the Securities and Exchange Act of 1934, and I don't feel that I should suffer the prejudice which would result by virtue of any news releases at this time.

The next point is --

THE COURT: Let me find out.

It would appear to the Court that what will occur here is that whatever papers are presented here today will be filed within the Court in the normal course of events.

Needless to say, I neither can nor would preclude any of the media from having access to any filed documents.

In addition to the filed documents, is it the

intention of the Commission to give out some separate and independent press release?

MR. MORTMAN: Yes, your Honor, it is the Commission's practice, and particularly at the time an action is first commenced, to issue what is commonly referred to as litigation release which may or may not be picked up by various other newspapers, including such papers as the Law Journal, which, of course, is very diligent in monitoring the complaints that are filed in this courthouse.

This is the Commission's general policy.

The staff has no power, and, frankly, no desire to see an abrogation of this policy. This policy is uniformly applied to all individuals and is simply a statement of fact as to what action was filed in this courthouse on a particular day, and I find it strange,on the one hand, Mr. Sloan continually contesting the constitutionality of Commission rules to have this Court in effect impose a prior restraint on Commission news-making activities.

THE COURT: Well, maybe we do not see eye to eye on that particular subject.

I would suggest you can point out to me where this matter has been litigated, if it has been. I am cognizant of certain strictures that have been put forth very recently by the American Bar Association and I will

be happy to hear you on the subject.

MR. SEIVERS: Your Honor, I believe that there, of course, be no prejudice to Mr. Sloan's case. This is a trial before his Honor. This is not a jury matter. There is no harm that could be forthcoming to Mr. Sloan.

I would ask the Court to consider that in making a ruling.

MR. NORTMAN: The simple fact is that as Judge MacMahon stated in an opinion which has been published in the CCH and I assume in due course in the Federal Reporters, Mr. Sloan is no stranger to this courthouse and he has filed a myriad of different lawsuits, all of which have generated a modicum of publicity.

I find it strange by any stretch of the imagination to find any prejudice by simply reporting the innocuous fact that a lawsuit has been filed.

THE COURT: Needless to say, anything which would apply to you would apply equally to Mr. Sloan despite the fact he may not be a member of the bar of this court. Mr. Sloan has asked that there be no releases except in filed papers.

I would enter an order to the effect that that be the case for both sides in this litigation. The media can be referred to thepapers which are on file here at the

courthouse. But if I find that either side, and I mean this, Mr. Sloan, gives out any information to the media, I will act on that matter with dispatch.

Therefore, I am going to tell both sides in this case the media can be apprised there are papers on file here at the courthouse. They may examine those papers and that is where it stops.

We are not going to litigate this case, either side, in the press. The press can have free access to the court files.

Your papers here are rather complete. But it would seem to me, Mr. Sloan to the contrary notwithstanding, that it is not good to litigage criminal cases,and by the same token, civil cases, in the press.

I recognize that the Commission has its own problems as far as its budgets and its public image is concerned. At the same time I think that the public image of any agency is enhanced by the end work product, not by the beginning press releases.

And I would direct both sides here to issue no releases and that goes not only for those who are present here but those superiors who are not present here.

You may direct the media to all filed papers, nothing more.

I'll tell you what, I'll put it down in my courtroom temporarily, which is courtroom 519 for January. I note it is now five minutes of six and I will require personal service on Mr. Sloan by 6:30 tonight. He is here. I'm sure he will accept service.

Will you do that, Mr. Sloan?

MR. SLOAN: Yes, sir.

THE COURT: I will sign it at 5:55 p.m.

Gentlemen, what I have done is on the first page it is returnabl before me, and I consider that a pro forma matter; that is, I will request the assignment committee to make a reassignment because of Mr. Sloan's application. Returnable before me on January 8th, 1975, at 2:15 p.m. in Room 519 here at the courthouse.

I direct that personal service be made by 6:30 p.m. today.

I have now signed the order to show cause and dated it 5:55 p.m.

The other matter I would mention to you is whatever the Commission's practice is in other cases, the press may be referred to the filed papers but I direct that there be no press or information release other than the press may examine the filed papers or, if you wish to give the press an exact copy of the filed papers, you may do that.

MR. NORTMAN: Yes, your Honor.

THE COURT: And, Mr. Sloan, the same thing goes for you, since this is done at your request. There is to be no materials submitted to the press other than material filed with this court. Once you have filed it with the court, you have the same prerogative the Commission does, to present this information to any media you wish.

MR. SLOAN: Incidentally, I would like to say that any publicity on my cases has been solely by virtue of the workings of the normal course of things. I have never submitted Judge MacMahon's decision to the press or any other decisions. These have been published by the Law Journal and by the Commerce Clearing House, Federal Securities Law Reporter in their normal course of activities.

One other point, your Honor, and I want to clearly understand what the sifnificance of this order is.

in reading theorder, I see nothing which would prevent me, for example, from catching my eight o'clock flight to Iceland tonight.

MR. SELVERS: That would raise the question of how Mr. Sloan would be able to comply with your mandatory order to permit immediate examination in an easily accessible place.

time that you retain counsel to represent you in them.

MR. NORTMAN: Your Honor, I hate to keep you here, your Honor, so late, but this relates to your directive with respect to press releases.

Now, your Honor has admonished the Commission to do no more than make available papers that are filed.

THE COURT: That is correct.

MR. NORTMAN: We submit that a necessary prophylactic is to alert the public that a temporary restraining order has been signed. Frankly, the pink sheets are not just circulated in the New York Metropolitan area. It is highly unlikely that this case would on its own generate the kind of interest that the Wall Street Journal might be interested in.

The only thing we can do is to issue an outstanding litigation release. How else would they be apprised?

THE COURT: Under the circumstances I suggest as an alternative, if you wish to communicate with the National Quotations Bureau or prsent an order to this Court relative to the National Quotations Bureau, assuming we have jurisdiction over them, I'm certain that this will be examined rather carefully by any judge of the court. Certainly it would be by me. It may well be at that time if you are dealing with another judge, since I have been

accused by Mr. Sloan of being biased against him, that other judge might feel differently about my very limited admonition to the Commission to publicize this particular case.

Maybe another judge will feel quite differently about this, and I do not intend that my own very limited directives shall be considered by any other judge to be the law of the case.

...

the proposed monitoring program described in detail in Securities Exchange Act Release No. 11193 (March 13, 1975).

It is contemplated that the monitoring program will be continually reviewed, where appropriate, modifications will be made; and, when it appears that special reporting is no longer necessary or appropriate, Rule 17a-20 will be modified or repealed.

The Commission welcomes suggestions concerning all aspects of its program to monitor the impact of Rule 19b-3. Such suggestions should be submitted on as timely a basis as possible and be directed to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. All such communications should refer to File No. S7-557 and will be available for public inspection. (Rel. 34-11395)

DECISIONS IN ADMINISTRATIVE PROCEEDINGS

SAMUEL H. SLOAN & CO. REVOKED AND SAMUEL H. SLOAN, ITS SOLE PROPRIETOR, BARRED

The Commission has revoked the broker-dealer registration of Samuel H. Sloan & Co., of New York City. The Commission also found it in the public interest to bar its sole proprietor, Samuel H. Sloan, from association with any broker or dealer. The Commission's action was based on Sloan's persistent, wilfull violations of the Exchange Act's recordkeeping, net capital, and reporting provisions and on injunctive decrees restraining him from violations of the recordkeeping and net capital provisions. The Commission concluded that: "Sloan's violations are neither trivial nor technical. They involve flagrant and long-continued breaches of significant duties imposed on persons in the securities business."

The Commission's opinion also noted that the United States District Court for the Southern District of New York has enjoined Sloan from refusing to make his records available for examination by the Commission's representatives and from initiating quotations for over-the-counter securities when he lacks the information called for by the Commission's Rule 15c2-11. Though this injunction is the subject of a pending appeal, the Commission thought it of some significance "that a court of competent jurisdiction found the second injunction appropriate and that it did so over Sloan's vehement opposition" and that "Sloan's own papers in the second injunctive suit show his continuing disposition to disregard or defy the rules governing registered broker-dealers. (Rel. 34-11376)

DECISION BARRING WILLIAM C. MILLER FINAL

The decision of an administrative law judge barring from association with any broker or dealer William C. Miller of Lodi, New Jersey, who was the sole director and treasurer of Project Securities & Co., Inc., of Union, New Jersey, formerly a registered broker-dealer, has become final. After 18 months, Miller may apply to the Commission for permission to become so associated in a non-proprietary, non-supervisory position in which his activities would be adequately supervised.

According to the decision, Miller, during November and December 1972, aided and abetted his firm's violations by effecting transactions when required net capital was not maintained, not giving telegraphic notice of such deficiency, and failing to file required reports. Moreover, he was an officer and director of the firm when a trustee was appointed under the Securities Investor Protection Act. (Rel. 34-11386)

COMMISSION ANNOUNCEMENTS

SILVER STACK MINES, LTD. PLACED ON FOREIGN RESTRICTED LIST

The Commission has placed Silver Stack Mines, Ltd., a corporation incorporated in Quebec, Canada, on the Foreign Restricted List by reason of the fact that purchases of its shares of stock are being recommended to investors in the United States and United States investors are purchasing these shares when no registration statement covering these shares has been filed or become effective pursuant to the provisions of the Securities Act of 1933. (Rel. 33-5584)

Exhibit B

sec news digest

Issue 75-88
(SEC Docket, Vol. 6, No. 18 - May 20)

May 6, 1975

RULES AND RELATED MATTERS

PROGRAM TO MONITOR THE IMPACT OF THE ELIMINATION OF FIXED COMMISSION RATES

The Commission announced on May 2 the adoption of Rule 17a-20 and related Form X-17A-20, the approval of two plans submitted under paragraph (a)(3) of Rule 17a-20, and the implementation of other aspects of the program to monitor the impact of Rule 19b-3 which provides for the elimination of fixed public commission rates on exchange transactions after May 1, 1975.

As adopted, Rule 17a-20 requires monthly filing of Form X-17A-20 by every broker or dealer with revenues of more than $5,000,000 in 1973 or 1974. Firms with revenues of more than $500,000 but less than $5,000,000 will be reporting the information required by the rule on a quarterly basis. The Commission has also determined to accept voluntary filings of Form X-17A-20 by those not otherwise required to file the form. The information received on the basis of such voluntary filings will be analyzed separately and considered along with the other information obtained as a part of the monitoring program.

The Commission also received a number of comments regarding the requirement in paragraph (b) of the proposed rule that there be notification to the Commission and to customers of changes in exchange membership. As adopted, broker-dealers are required to give 15 days notice of intention to resign its membership interest in an exchange to the Commission and 10 days notice of such intention to customers accompanied by a statement as to the anticipated effect of such resignation. Furthermore, the rule makes clear that notification is not required as long as a broker-dealer retains one membership interest on a particular exchange. Finally, notification to customers will only be required when the resignation is from the exchange which has theretofore been the examining authority for such broker-dealer pursuant to Section 9(c) of the Securities Investor Protection Act.

The rule does not restrict the right of a broker-dealer to contract to sell a membership interest; however, where notification would be required under the rule, the resignation should not take effect and delivery of the membership interest should not be scheduled prior to the termination of the notification period.

Certain changes of a technical nature have been made to Form X-17A-20.

Rule 17a-20 and related Form X-17A-20 are adopted and declared effective immediately.

The NASD and the NYSE have filed plans which the Commission approves pursuant to paragraph (a)(3) of Rule 17a-20. Paragraph (a)(3) of Rule 17a-20 would allow brokers or dealers who are members of an exchange or association which files an appropriate plan declared effective by the Commission to dispense with a separate filing to the Commission.

Under the NASD plan, their member firms (other than NYSE member firms) which are required to file Form X-17A-20 will file a NASD form containing the required information with the NASD. The first monthly filing for the month of April, 1975 will be due at the NASD by May 23, 1975, and thereafter by the twentieth calendar day of each month. The first quarterly filing will be due at the NASD by July 24, 1975, and thereafter on the twentieth calendar day in the month following each successive quarter.

Under the NYSE plan, their member firms will submit a short supplemental [illegible] with NYSE's Joint Regulatory Report within 17 business days after the close of each calendar month starting with the calendar month April, 1975.

SECO only broker-dealers who are required by the rule to submit information will file the Form X-17A-20 directly with the Commission.

After consideration of the public comments received and the advice of its two advisory committees, the Commission announced that it will be implementing the other aspects of

COURT ENFORCEMENT ACTIONS

COSSE INTERNATIONAL SECURITIES, INC.,
CHARLES B. COSSE ENJOINED

The Port Worth Regional and Seattle Regional Offices announced that on April 24 Federal District Judge Frank G. Theis, at Wichita, Kansas, entered an order of permanent injunction by consent against Cosse International Securities, Inc. and Charles B. Cosse, both of Seattle, Washington. Cosse consented to the entry of the injunction without admitting or denying the allegations in the Commission's complaint filed February 25, 1975. It was also announced that on April 28, 1975, Judge Theis entered a judgment by default against Hershberger Enterprises, Inc., of Wichita, Kansas. (SEC v. Hershberger Enterprises, Inc., et al., D. Kan.). (LR-6862)

IVAN ALLAN EZRINE, OTHERS INDICTED

The New York Regional Office announced that on April 14 a federal grand jury in the Southern District of New York returned an 18 count indictment charging Ivan Allan Ezrine, formerly of Mill Neck, New York; Joseph Lichtman, Brooklyn, New York; Murray Lichtman, Queens, New York; Leon Mayer, Brooklyn, New York and Edward Vassalo, Lawrence Goral and Anthony L. Greco, Jr. of New Jersey with conspiracy, mail fraud, securities fraud, and making false, fictitious and fraudulent statements in documents filed with the Commission.

The indictment alleged that, among other things, during the period from 1971 to August 1972, secret cash payments were utilized to sell the common stock of Minute Approved Credit Plan, Inc. (Minute). These payments were allegedly made by the Lichtmans, principals of Minute, to Ezrine and unindicted co-conspirators Michael Hellerman and Sidney Stein. In addition, it was charged that the defendants falsified purchases of approximately 30,000 of the 50,000 Minute shares purportedly sold to the public. (U.S. v. Ivan Allan Ezrine, et al., S.D.N.Y., 75 Civ. 363). (LR-6863)

COMPLAINT NAMES PACIFIC COAST PROPERTIES, INC.

The SEC announced the filing of a complaint in the U.S. District Court for the District of Columbia on May 2 seeking a court order directing Pacific Coast Properties, Inc. (PCP), a Delaware corporation, with principal offices in Malibu, California, to comply with the reporting provisions of the Securities Exchange Act of 1934 and seeking a permanent injunction against further such violations. According to the Commission's complaint against PCP, that company failed to file its Items 2 and 10 (Summary of Operations and Financial Statements) of its annual report on Form 10-K for the fiscal year ended December 31, 1974 with the Commission. (SEC v. Pacific Coast Properties, Inc., U.S.D.C. D.C.). (LR-6864)

THREE PLEA AND ARE SENTENCED IN
BARR FINANCIAL, LTD.

- The SEC on April 29 announced that on April 23 and April 28 respectively, Louis C. Schiess and Dwyn Louis Hendrickson, both of Los Angeles, California, pled guilty in Federal District Court in Los Angeles, California, to one count of conspiracy to commit securities fraud, mail fraud, and wire fraud and to sell unregistered securities and one additional count charging each with the unlawful sale of unregistered securities. The indictment which resulted in these pleas consisted of a total of 25 counts charging conspiracy, mail fraud, securities fraud, and the sale of unregistered securities in connection with transactions in stock of Barr Financial, Ltd., and was returned on July 30, 1974.

  At the time these pleas were entered, Federal Judge A. Andrew Hauk sentenced each defendant to serve two years in prison and to pay fines of $5,000 by Schiess and $2,500 by Hendrickson.

  Chess Wilburn Barr, III, the only remaining defendant in this matter, is presently a fugitive whose whereabouts are unknown.

  Also arising from the operations of Barr Financial, Ltd., in August 1974 Ronald W. Branham, Barr Financial's public relations man, pled guilty to charges in an information of issuing a false press release in violation of the fraud provisions of the Securities Exchange Act of 1934 regarding one of the acquisitions by that company. On October 2, 1974, Branham was sentenced to two years on probation and to pay a $1,000 fine, $500 of which was suspended. (U.S. v. Chess Wilburn Barr, III, et al., CR-74-1107-AAH, C.D. CA.). (LR-6865)

SEC Revokes License Of Samuel H. Sloan, Penalizes Proprietor

By a WALL STREET JOURNAL Staff Reporter

WASHINGTON—The Securities and Exchange Commission revoked the broker-dealer registration of Samuel H. Sloan & Co. and barred Samuel H. Sloan, sole proprietor of the New York firm, from association with any broker-dealer.

The agency upheld an earlier initial decision by an SEC administration law judge and found that the firm violated record-keeping, reporting and minimum-net-capital requirements.

In New York, Mr. Sloan immediately said he plans to seek review by the federal appeals court in New York City. He also criticized the SEC for what he termed "unfair and prejudicial publicity" in his case. He added "This trial by newspaper is very damaging."

Earlier this year, a federal district court in New York permanently rejoined the firm from operating in violation of the net-capital and record-keeping rules.

EXHIBIT D

The New York Times

WEDNESDAY, MAY 7, 1975

Handling of Cases Defended by S.E.C.

WASHINGTON, May 6 (UPI) — Ray Garrett Jr., chairman of the Securities and Exchange Commission, declared today that Government disclosure of corporate slush funds had seriously damaged several business leaders.

Some critics insist, he noted, that S.E.C. lawsuits "result only in a slap on the wrist and an admonition to sin no more." Mr. Garrett continued:

"I do observe, however, that the pain may be greater than it appears as one reads of our complaint and the quick settlement. To a confirmed crook, it may be one thing. To one who has been operating among, and wishes to be regarded as, one of the leaders in American industry, it is quite another."

Mr. Garrett spoke at the 12th

Continued on Page 61, Column 1

S.E.C. DEFENDS ACTIONS ON CASES

Continued From Page 55

annual meeting of the Society of American Business Writers.

He said the S.E.C. often reached quick settlements with corporations to avoid the cost of a lengthy trial that would not appreciably benefit the public or the Government.

He said the primary disclosure of facts by the S.E.C. often led to more damaging consequences by the filing of stockholder suits and sometimes by criminal suits brought by Federal and local authorities.

The S.E.C. has brought charges for illegal slush funds against Gulf Oil, Northrop, United Brands, Phillips Petroleum, Minnesota Mining and Manufacturing, American Ship Building and Sanitas Service.

NEWS

SECURITIES AND EXCHANGE COMMISSION
Washington, D. C. 20549
(202) 755-4846

HOLD FOR RELEASE UNTIL 1:30 P.M., EDT

THE FINANCIAL PRESS AND THE SEC

An Address By

Ray Garrett, Jr., Chairman
Securities and Exchange Commission

May 6, 1975

SOCIETY OF AMERICAN
BUSINESS WRITERS

Sheraton-Carlton Hotel
Washington, D. C.

Exhibit F

If one takes a broad-scale, long-range view, it seems clear that the SEC and American business writers are essentially in the same business. We are both devoted to the process of keeping American citizens informed on what is going on in American business. We both like the truth and the whole truth -- the bad with the good -- and we both seek the widest possible dissemination of our product. We both strive for impartiality and objectivity.

This is not to say that we have always made common cause. Indeed, in many, largely local, skirmishes we must appear to you as the enemy. Our notions of propriety with respect to indirect selling efforts prior to a public offering -- so-called "gun-jumping" -- dry up sources of information for you. So do our ideas on insider trading and the selective dissemination of non-public, material information.

In this latter area, we are very conscious of the fact that we have made many persons confused and nervous. They are confused over what is material for this purpose, and what information is public and when, and they are nervous about the consequences of guessing wrong. Here we are still endeavoring to publish some guidelines, but it remains a subject of some contention and conflicting desires.

Despite our repeated exhortation for readability and the avoidance of boiler-plate and excessive technicality in disclosure documents filed with us, we continue to be viewed as the apostles of turgidity and the prime progenitor of the unreadable prospectus. In this regard, I must admit that we speak, to a degree, with a forked tongue. We urge draftsmen to write so that ordinary investors can understand, but we have no inclination to relax legal liability attendant upon erroneous or incomplete disclosures.

As a lawyer practicing in the field, I listened to the Commission when it exhorted, but I was even more keenly aware of the fact that the one person who could be guaranteed to read the prospectus, or whatever, with great care was the plaintiff's lawyer if things did not go well. So I wrote with him constantly in mind. A careful lawyer can hardly do otherwise. This does not excuse some of the unreadable stuff you encounter in what our disclosure processes produce, but it explains a lot of it. This really makes your efforts all the more valuable, since you are not subject to the same strictures.

One reason that we have so much in common is that the Commission and the acts that it administers are such a rich source of information.

The Congressional record surrounding the creation of the federal securities laws, especially the Securities Act of 1933, reflects Congress's understanding that, while the Commission would be the repository of the vast amount of information expected to be filed with it by registered companies, other institutions would carry a major share of the responsibility for analyzing and disseminating that information to the investing public -- not because of some general "public interest" attitude on the part of those institutions, but because it is in their interest to do so.

As you well know, there is a vast amount of information available for the asking in our Public Reference Section at 1100 "L" Street. For example, the Commission receives more than 200,000 formal filings and reports each year that are made public immediately. If you should wish to review reports of secur transactions and holdings by officers, directors and ten-percent stockholders in securities of companies registered under Section 12 of the Securities Exchange Act, you would currently have to look at some 9,500 reports each month.

During our last fiscal year, we had approximately 19,000 visitors in our public reference room in Washington and more than 17,000 written requests for information not

involving the reproduction of documents. The Commission's staff conducted more than 52,000 searches of its records for information being sought by members of the public.

So we know that a great deal of this information is used. We know, also, that no other regulatory agency regularly makes available more information to a wider audience. For comparison purposes, during a recent year, the Federal Power Commission distributed approximately 500,000 copy pages of material filed with or available from it; in the same year, combining hard copy and micro-fiche, the SEC distributed more than 150 times as much, or over one hundred million pages.

We have become an even richer source by virtue of the recent amendments to the Freedom of Information Act, but here we also may encounter some disagreements.

The Act, as you know, requires the disclosure of all information contained in the files of an agency unless the information falls within one of nine exemptions, including investigatory records compiled for law enforcement purposes.

The Act now also imposes very stringent time requirements for the processing of requests. Initial decisions on requests must be made within ten working days of their receipt by the

agency; an appeal must be decided within 20 working days of receipt. The SEC publishes a release each time it decides an appeal; we are also going to make public each original request and our reply. The information, itself, must be made available within a reasonable time thereafter. If the appeal within the agency is denied, or if the agency, either in the initial stage or on appeal, fails to respond within the time limits provided, the requesting party may go directly into court to require the disclosure of documents. Where it appears appropriate, the court will make its own review of the records to determine whether their withholding is proper under the Act.

Freedom of Information Act matters receive expedited treatment on the court's calendar and the court may assess reasonable attorney's fees and other costs against the Government. Moreover, in order to get the bureaucracy's attention, so to speak, if the Court issues a written finding that the circumstances surrounding the agency withholding raise questions whether agency personnel acted arbitrarily or capriciously, the Civil Service Commission must promptly initiate a proceeding against the officer or employee who was primarily responsible for the withholding. The Civil Service Commission must submit its findings to the officer or employee and the agency must take the corrective action recommended by CSC.

As you might expect, the time period permitted by the Act for an initial decision is causing us, and I expect other agencies, a great many problems. In the abstract, ten working days may seem sufficient time to process a request and, if an agency has manpower to allocate for the task, it may be. But the fact of the matter is, at least at the SEC, that presently we don't have the manpower we need for this work or the money to obtain it. I don't think it is any secret that we underestimated both the amount of work required to process any one request and the number of requests we might receive. In any event, at least in the short-run, we are faced with the necessity of taking staff people off what we think is more substantive work, such as enforcement actions, in order to process FOIA requests.

In the first ten weeks of operation under the Act, as recently amended, we have received 134 requests, approximately ten percent of which emanate from the press. Approximately 75 percent of the requests we receive concern investigatory records. We have handled about 80 percent in the ten-day period, which does not bode well for Jim Rosenfeld, our Public Information Office Director and Freedom of Information Act person.

I don't know what your reaction to this is, but it bothers me -- both as a citizen and as the Chairman of the Commission. It bothers me as the Chairman, because I see staff people doing work that, in most cases, may not benefit the general public, as their "normal work" usually does and, because as an administrator, I know that it creates morale problems. As one young staff member recently put it: "I didn't go through law school and come to the Commission to search files." I have to agree.

A second general problem we have noticed is one raised by "harassing" requests. By this I mean members of the public who, in either one letter or multiple letters in one envelope, or multiple letters over a period of time, ask for voluminous amounts of information without any apparent motive other than ordinary curiosity. Even with the short experience that we have, it is becoming apparent that this may be a very serious problem. As now written, the FOIA does not require any showing by the requesting party as to why he needs or wants access to materials in our files.

As a general matter, this may be wise, but it seems to me that some type of limit ought to be considered, perhaps on the number of requests a person is permitted within some time period, in the absence of extenuating circumstances. Without such a limit, it would be possible for the public or any segment

thereof, including the press or the bar, for that matter, literally to bring the SEC or any other agency to a grinding halt.

A third problem is money. The FOIA permits an agency to charge fees for the provision of materials in fulfilling a request, but the fees are limited to "reasonable standard charges for document search and duplication" and may "provide for recovery of only the direct costs of" such search and duplication. Thus, we have not been charging for the time an attorney spends reviewing records to determine whether disclosure should be made. This is, as you may imagine, the most costly step in the process.

The most important substantive change effected in the recent amendments was to the exemption for investigatory materials -- the so-called (b)(7) exemption. This is the one substantive amendment which is having a major impact on Commission procedures.

As originally enacted, the Freedom of Information Act provided an exemption for "investigatory files compiled for law enforcement purposes except to the extent available by law to a party other than an agency." 5 U.S.C. 552(b)(7). Under this language the courts had held that once a district court has determined that records sought were properly classified as an investigatory file, whether the matter to which they related

was open or closed, its inquiry would be at an end and it was required to sustain the availability of the exemption from disclosure. */

In order to protect innocent persons from undeserved embarrassment, and for other reasons, we conduct most of our investigations in private. Raw investigatory files frequently contain references to persons not involved in any illegal activity and in terms which, if publicly disseminated, could be quite harmful to them. All such references in the files could be removed, if at all, only through the most painstaking and time-consuming line-by-line analysis of the investigatory records. This is a process that is not merely clerical; it often involves matters of substantial judgment -- and the only people in a position to make that judgment may be the staff attorneys who should be conducting the investigation or enforcement action.

For these reasons and others, including the possibility that the target of the investigation may in fact prove to be innocent, the Commission has determined generally to attempt to protect the contents of files where there is an on-going investigation or there is a concrete prospect of further enforcement action. Our decision in this matter was contained in the first

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*/ Frankel v. Securities and Exchange Commission, 460 F. 2d 813 (C.A. 2, 1972); Weisberg v. United States Department of Justice, 489 F. 2d 1195 (C.A. D.C., 1973) (en banc), certiorari denied, 416 U.S. 993 (1974).

public release under the FOIA. */ There, the requesting party sought disclosure of all records relating to Equity Funding Corporation of America, particularly those contained in our investigatory files. Access had already been granted by the staff to records other than those of an investigatory nature. In support of its refusal to disclose investigatory records, the Commission noted the existence of both continuing investigations and judicial proceedings.

Where there is no continuing investigation and no concrete prospect of further enforcement proceedings, the contents of our investigatory files will generally be made available except for internal memoranda or materials that would disclose a confidential source or investigative techniques. This decision was made despite our deeply felt regret that, in some instances, disclosure of records would be made even though persons who cooperated in our investigations would have reasonable grounds to object for reasons of personal privacy or business secrecy.

We therefore invited any person who has previously given testimony or supplied documentary evidence in a Commission investigation, or who will do so in the future,

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*/ In the Matter of Request of I. Walton Bader, FOIA No. 1 (April 3, 1975).

to write to the Commission if he believes that particular portions of the testimony or specified documents would be exempt from disclosure, to specifically identify the testimony or documents and to demonstrate why disclosure would "constitute a clearly unwarranted invasion of personal privacy" or would publicly expose sensitive commercial or financial information that would not normally be disclosed.

Apart from specific problems under the FOIA, we have other areas of disaffection, based in part, perhaps, on lack of complete understanding, but also based on different motivations and standards.

We are not happy when we are criticized by business writers. Some criticism rolls off with little pain. One critic sent me a copy of a letter he had sent to a friend, which read:

"Dear Jack:

> "What kind of an impression have people out your way of Ray Garrett? I get the impression, he's kind of a pawn, and not a very bright one at that.
>
> "Anyway, it's clear SEC is out to ruin the investment business. It ruined the mutual fund business and has no concern whatsoever about what it does to capital formation capabilities. More I have experience with them, more they seem to me mostly a bunch of jerks."

But, criticism from such informed persons as you, is another matter. When it is well taken, when we have simply not done the job we should, criticism is painful, even though, and especially because, it obviously is justified. Some criticism is of another nature.

I am referring particularly to the unfavorable comment that I have read rather often about our enforcement procedures. For some time, I have read that the lawsuits we bring against persons who have violated our laws, being frequently settled at the time they are filed, or shortly thereafter, result only in a slap on the wrist and an admonition to sin no more. This most recently has been raised with regard to our actions against certain large corporations for having substantial sums, in unaccounted-for funds, used, among other things, for illegal political contributions. Why do we let the management of such companies off with a promise not to do it again?

The first answer to the question is that we do not. In the cases that have generated this adverse comment, we, in fact, have obtained the creation of special committees of uninvolved persons to make a thorough investigation of all of the transactions involved -- a far more detailed investigation than we have been able to make with our own staff -- and sometimes the retention of special counsel to investigate and prosecute any claims that might justly be brought against management or others

on behalf of shareholders. We have, on occasion, however, successfully negotiated for the reimbursement to the company of substantial sums by officers responsible for misappropriations, and in every case we have insisted upon the establishment of procedures to reduce the likelihood of a recurrence.

The decision to employ some of these remedies is based upon the Commission's need to conserve its limited resources and to require that the persons responsible for the alleged misconduct bear the direct cost of completing this painstaking work. This is not to say that the Commission retains no further presence in the case. Indeed, the staff closely monitors the examination and, if it should believe that the examination has not been carried out according to the spirit of the court decree, the Commission is prepared to reassert itself in the litigation.

All this does not satisfy those who think someone also ought to go to jail. We, however, think these are substantial remedial measures that provide good assurance to investors against the continuation or repetition of the improper behavior. The criticism seems to be that they do not inflict sufficient pain. Perhaps they do not. I am not the best judge of that.

I do observe, however, that the pain may be greater than it appears as one reads of our complaint and the quick settleme To a confirmed crook, it may be one thing. To one who has been operating among, and wishes to be regarded as, one of the leaders in American industry, it is quite another. While I am not an expert at measuring pain, I am quite certain that our actions -- the very fact of them -- against major corporations and their top management, inflict excruciating pai We have, in fact, contributed to the destruction or impairment of more than one reputation and career, even though that has not been our desire.

It is also true that our enforcement actions customarily spawn one or more class actions on behalf of shareholders or others who seek big money damages, compensatory and punitive. We do not stimulate these, but they are the natural consequence of our making public our view that some illegal behavior has taken place. In many instances, these produce the penalty that hurts the most.

The important thing for our critics to understand in these matters is that our authority for going to court is to prevent illegal behavior or its recurrence, not to punish past behavior. We can go to court on the civil side, on the ground that the defendant is about to do something wrong and must be stopped -- a reasonably rare occurrence -- or that he has erred in the past and therefore might do it again -- our most common posture. On

the whole, the courts have been liberal in accepting our argument that a past trangression is enough to justify enjoining future transgressions, but occasionally we lose on the ground that there is no serious likelihood of recurrence.

Given the fact that our basis for being in court at all is to achieve protection against recurrence, it seems reasonable to accept settlements that offer everything, or almost everything, that we could obtain through extended and expensive litigation. All we can get from complete success in our court cases is an injunction against further violations and what lawyers call "ancillary relief" -- the appointment of special counsel, audit committees, a receiver, some disgorgement of ill-gotten profits and the like. If we can get the injunction and a reasonable deal on the ancillary matters, then it seems the wise thing to do. There is no assurance that we could do better at the end of a long trial, costing everybody, including the Government, a lot of money.

If one wants to inflict more pain, that must be done through criminal prosecutions, which are the province of the Department of Justice and the U.S. Attorneys. I do not want to disassociate ourselves from this process. When we think it appropriate, we are quick to refer a case to them with a recommendation for grand jury consideration, and, if a prosecution is undertaken, our attorneys often participate very actively in assisting the U.S. Attorney. The ultimate

decision as to whether a criminal action should be brought, however, is theirs and the grand jury's, not ours.

From time to time, it has been suggested either that the Commission be authorized to bring its own criminal cases or that it be authorized to sue for a civil fine -- that is, a money penalty -- instead of an injunction against future misconduct, and, possibly, some repayment of illegal expenditures. While I, personally, at least, am not convinced that it would be wise to free us from the discipline of referring criminal prosecutions to the Department of Justice, the idea of a civil fine has considerable merit. It would enable us to accommodate policy objectives to legal procedures somewhat more forthrightly than is now the case, although it could have some disadvantages if its existence also implied new procedural burdens in our proceedings. Whether it would satisfy those who want greater pain for corporate malefactors would depend upon what we were authorized to do and what we did with it.

As you can readily understand, the cases of illegal political contributions, bribes and slush funds, present us with quandries far more challenging than whether the penalties are tough enough. While I have no difficulty with the cases we have brought to date, they do raise the question of how far we wish to go.

These cases have all involved fairly substantial sums under the control of, and created with the connivance of, or at the direction of, the top management of the company. They raise questions, in varying degrees, of the quality of management, the quality of earnings, and the integrity of financial accounts and reporting. When these factors are present, we have decided they are material, even if the sums involved, had they been related to some other activity, would not otherwise have been considered material.

But, how far should we go? Is every illegal expenditure -- what the Mexicans call "la mordita," and what we Chicagoans call "a little grease" -- to be material for disclosure purposes simply because it is illegal? If this question is merely interesting domestically, it poses a significant dilemma internationally. And it arises in different forms. Here, I think, I have something of a difference of views with you or some of your brethren.

The press is often put in the same uncomfortable position we are -- when information about bribery or other management fraud comes to light, and its disclosure could prove harmful, particularly to the existing shareholders of the company. In some of our cases, particularly management fraud cases, the press has publicized all the important facts while we are still pondering the question. This, no doubt, makes it easier for us, and perhaps we should be grateful to the press for that. Once the facts are out -- and the companies involved usually produce a very frank press release promptly -- our philosophical concerns effectively are resolved.

But such episodes cause reflection on my part. Are we timid, or collusive, or corrupt in even considering that disclosures of dramatic stuff like this should be weighed carefully as to its effects on innocent persons, and as to timing? Are we flirting with heresy in even contemplating the effects of the timing of disclosure of difficult facts? Is this a deviation from our canon of full disclosure?

I am thoroughly familiar with Watergate and its dreary aftermath and administered news and bureaucratic cover-up. I have no desire to hide our mistakes or to avoid a proper, after-the-fact, review of our judgment and actions, but I wonder if the press should always feel obliged to disclose immediately information that we might consider should be disclosed only at a later time. These are issues that, under our system, can only be addressed by the press. But, should the press not consider, as we must, that the effect of disclosure is at least as important as the fact of disclosure? I know very well that this is slippery ground. Too tender a concern for the consequences of disclosure can lead to an erosion of sound principles both by you and by us. This burden of judgment is one we both share, and I suppose it is not surprising that we sometimes arrive at different conclusions.

Let me move away from this gloomy area, however. The Securities and Exchange Commission and the financial and

corporate community are increasingly well served by business writers.

The other day I received a copy of the report of Roper Associates on public reception of news media. It found that television was increasingly the major source of news and regarded as the most reliable. The report did not break out business news from news in general, so it does not signify much for our area of mutual concern. I only hope that investors do not rely on television for business news, because they will not get it. Considering the costliness of time on that particular medium, I suspect it will never rival the written word, but one would hope that some day it would show a bit more sophistication and attention to the serious problems of our economy than it has to date.

In closing, let me return to my original theme. Investors, and citizens in general, must know more about what our corporation are doing and why they are doing it. This is important both to improve the performance of our major companies in the public interest and to give people a better understanding of how business works, to provide jobs and, to this end, to attract capital investment. The level of understanding of these matters is dangerously low. It is not helped by abysmal ignorance of

our teachers at all levels. Too many of them do not know how the system works, and they are instinctively hostile toward it. In fact, it is high fashion in academic circles to be suspicious of, and to ridicule, all corporate behavior.

You know, and we know, that there is much to be improved in this regard. We do not intend to relax in our efforts to improve corporate behavior toward investors and the behavior of the various professionals who are so important to the process.

Some months ago our Denver Office was bombed. It was a very powerful bomb in the men's room used by our staff, and only by good luck did our people avoid serious casualties, although others were not so fortunate. The note planted in connection with the bomb said it was directed at the SEC as the tool of the capitalistic-imperialist pigs. We are not concerned with imperialism, but the capitalistic part is true. We are devoted to making the system of private ownership of capital work, by making it fair and efficient. This system has an enormous task to perform in the coming decade. To the extent that government can facilitate its accomplishment, we intend to be ready.

The Commission's Critics Say It Is Not Tough Enough

Crime Up in Big Business Too, S.E.C. Discovers

By MARK GREEN

Not since the 1930's—when former New York Stock Exchange President Richard Whitney went to jail for stock fraud—have so many of the country's leading corporations and businessmen borne the taint of illegality.

To date, the Watergate special prosecutor's office has successfully prosecuted 17 companies and 18 of their officials for violations of Federal law against using corporate funds for political campaign contributions (but with the corporations involved fined an average of $7,000, while earning an average of $77,000 a minute, it took each firm about six seconds to pay its debt to society).

The Civil Aeronautics Board is considering what penalties to impose on Braniff Airways and American Airlines for their false accounting of political slush funds. In January, the Minnesota Mining & Manufacturing Company was cited by the Internal Revenue Service and indicted by the Justice Department on income tax charges involving $634,000 in hiuden campaign contributions.

It is the Securities and Exchange Commission, however—the watchdog over errant capitalism—which has most spectacularly entered this area.

In the past few months, the commission has sued seven firms, including Gulf Oil, the Northrop Corporation, and United Brands, for having failed to disclose to shareholders the existence of slush funds either for illicit political contributions at home or bribes abroad, or both.

But, contend the critics, the results of these cases are less than spectacular. All ended in consent settlements, filed almost simultaneously with the original complaint which permit the accused corporation to technically deny its guilt while agreeing to be enjoined from future vioaltions.

There are two polar views of the commission's performance here. It is proud of itself, though slightly defensive, about its accomplishments against what it calls "management fraud." Stanley Sporkin, the highly regarded director of the commission's enforcement bureau, said, "We did not to get into this area. We got into it on our and have had a great impact. Anyone who thinks these cases are what steps is ridiculous." He added that the quick settlements conserve the Securities and Exchange Commission's limited resources and encourage lawsuits by company shareholders.

On the other hand, various public interest lawyers view the settlements as "one free bite of the apple." The factor of deterrence is lost, they believe, if potential violators realize they will be allowed one unpunished violation. To avoid the situation, the commission could seek new legislative authority authorizing it to collect civil fines for past false and misleading statements—and not merely sue to enjoin future violations. A former general counsel for the commission, Roger Foster, thinks restitution should always be required in these cases. "You've got to hit the officers where it hurts: make the guilty ones pay it back."

Kenneth Guido, the litigation director for Common Cause, argues that the commission should negotiate for stricter settlements, since the defendant companies are usually caught cold and lack bargaining leverage. Mr. Guido says, "I would have required total disclosure, which is the only way to know the full impact of those tens of millions accumulated in secret funds."

There are other possible ways to discourage corporate slush funds for politics and payoffs.

• *Shareholder actions.* Lawsuits by shareholders have followed many of the special prosecutor's cases. Indeed, one action by Northrop shareholder Jay Springer compelled that firm to reorganize its board of directors so that 60 per cent of its members were required to be "outside" directors; i.e., not controlled by management.

• *Enforcing existing law.* To some, using the disclosure statutes of the Securities and Exchange Commission and the Civil Aeronautics Board against political slush funds is akin to sending Al Capone to jail for tax evasion, which is easier to prove than his more celebrated crimes.

Preferably, political slush funds can now be directly attacked under the expanded authority of the new campaign spending reform law. But since the Federal Election Commission, which is to police the reforms, has only been in existence for about a month, the jury is still out on whether the pre-Watergate toleration of illegal corporate giving will persist in the post-Watergate period.

• *Creating new law.* The Senate Subcommittee on Multinational Corporations will begin hearings this week into the legal and moral behavior of certain domestic firms abroad. Said one Senate investigator, "As far as we can determine, no U. S. law is violated if you want to go out and buy a foreign leader." The subcommittee will therefore consider making it illegal as a matter of law for American firms to bribe foreign officials abroad.

A Corporate Crime Wave?

Yet why, it may be asked, do multinational Companies need laws to tell them that bribery is a bad thing? There are differences of opinion on the overall morality of big business. Harvey Pitt, the executive assistant to the chairman of the Securities and Exchange Commission, says, "People here at the commission start with the premise that American business is run on a very high level of morality."

But Ralph Nader thinks that "recent disclosures indicate that, if anything, we have been grossly understating the prevalence of corporate crime in our society." Joining him in a sense is 87-year-old William L. Knight, a former chairman of the Minnesota Mining & Manufacturing Company, who recently said of his troubled firm, "I don't know that 3-M did anything different than a great many other corporations did."

Mark Green is the director of the Corporate Accountability Research Group, and author of the forthcoming book "The Other Government: The Unseen Power of Washington Lawyers."

THE DAILY ADVANCE, Lynchburg, Va., Wed., May 7, 1975

Gulf told to answer bribe charge

CARACAS, Venezuela (AP) — Venezuela has given the Gulf Oil Corp. until Thursday to declare whether $4 million in alleged bribes was paid to Venezuelan officials or discontinue its business in this oil-rich nation.

A Gulf spokesman at the company headquarters in Pittsburgh said late Tuesday that the firm had not received an official communique from the Venezuelan government and would have no comment until official word is received.

President Carlos Andres Perez and his cabinet decided after a meeting Tuesday to demand clarification from Gulf within 48 hours, by 4 p.m. (EDT) Thursday. A story in New York's Wall Street Journal last Friday said Gulf executives told U.S. Securities and Exchange Commission investigators that politicians in a foreign country compelled the company to pay the bribes in cash contributions in order to stay in business there. The country was not named, but the newspaper said it could be a Latin American nation.

"Since this foreign company (Gulf) has dominating interests in Mene Grande Oil Co., which operates in Venezuela, and due to the fact that the charge in reference has given rise to commentaries which could involve Venezuela, the national government has resolved to urgently ask Gulf Oil Co. ... to publicly clarify whether Venezuelan public or political officials have been objects of or participated in the reported bribery," the communique said.

Gulf holds a 50 per cent interest in Mene Grande Oil Co., the third largest producer in Venezuela. The remaining 50 per cent is shared by International Petroleum Co., a subsidiary of Exxon, and a subsidiary of Royal Dutch Shell.

Rafael Macia-Jerez, assistant to the president of Mene Grande, last week denied any involvement by the company. He said the firm "has been in Venezuela 52 years and we have never made any contributions to any political campaign nor have we paid bribes or made any illegal payment to any government official."

The communique said Perez and his cabinet "analyzed and studied the information divulged by the international press during the past few days, according to which Gulf Oil Corp. has stated that between the years 1966 and 1972 it was obliged to pay certain sums of money in order to continue operating in a country whose name was omitted."

If the requested explanation is not forthcoming in 48 hours, the communique said "the nation's executive will order Mene Grande Oil Co. to suspend its activities until Gulf Oil Corp. clarifies the participation or lack of it by Venezuelan public or political functionaries in the events referred to."

The communique said Venezuelan political parties supported the government decision and that the U.S. government had also been asked to investigate.

The Venezuelan congress opened its own investigation Tuesday and also agreed to take up a proposal by Deputy Jaime ... ichi, head of the ruling Democratic Action party's parliamentary faction, calling for a review of all of Gulf's operations in Venezuela.

Venezuela plans to nationalize its 2.6 million barrel a day oil industry during the course of this year and its congress is studying a government-proposed bill calling for immediate state takeover. The oil industry is operated by a score of mostly American-owned companies. Subsidiaries of Exxon, Shell, Gulf Oil, Mobil, Sun Oil and Texaco are among foreign-owned firms that will be affected by the nationalization measure.

"Viewing the perversely ambiguous form in which the case was presented, it could well be a maneuver against the decision of Venezuela to nationalize its oil industry," Lusinchi said.

The Nation

In Summary

Overseas, Bribes Make Things Work

Bribes, kickbacks and gifts worth millions of dollars have been for years part of the accepted overhead of American corporations in getting business overseas, a New York Times investigation has disclosed.

Reporter Michael C. Jensen, on the basis of many interviews with businessmen by correspondents of The Times, wrote that the corrupt practices range from the payment of a few dollars for visas and customs clearances to large sums to highly placed foreign officials and military officers.

Some of the largest payments have involved the overseas sale of American arms, made in the form of commissions or fees to foreign agents or consultants, in many cases for legitimate services in securing business.

The Defense Department, which often serves as middleman between American defense contractors and foreign governments, sanctions what it calls "reasonable" agents' fees. In other cases, however, large sums are paid to "influence peddlers" who use their positions or connections to win contracts for their clients.

The Northrop Corporation, which has sold its military aircraft to a number of foreign countries, is said to have paid out $30-million over several years, mostly for overseas sales. According to a private report, Northrop employed over 400 to 500 consultants and agents during that period.

Other categories of business are also involved. Officials of the Gulf Oil Company have reportedly conceded that they were forced to pay officials in a single country over $4-million to stay in business there. The United Brands Company is said to have bribed a high official in Honduras in exchange for a reduction in the export tax on bananas.

These cases are now being investigated by a number of Government agencies and the Congress. There are no provisions in United States law that expressly forbid American business from making such overseas payments, though their attempts to conceal them is improper. Bribery statutes in many foreign countries are not strictly enforced. There are frequently sensitive diplomatic complications that discourage full disclosure.

International companies other than American ones engage in corrupt practices to obtain business, and American corporate officials complain they must follow suit if they wish to compete.

Northrop's List

The improper use of corporate cash has also been an accepted practice within the United States. Six well-known companies, Northrop and Gulf among them, have been charged by the Securities and Exchange Commission with having maintained secret funds for illicit campaign contributions.

Last week, as part of Northrop's legal settlement, an audit report was filed with the commission naming the political beneficiaries of the $300,000 in contributions the company disbursed from the fund since 1961.

According to the audit, Richard M. Nixon received $10,000 from Northrop for his 1968 Presidential campaign (in addition to the $150,000 for 1972 disclosed during the Watergate investigations). His opponent in 1968, Senator Hubert H. Humphrey, was given $6,175.

Politicians of both parties in California, where Northrop is based, were given a substantial share of the largesse. Eugene Wyman, now deceased, a noted California Democratic fund-raiser, received $20,000 to dispense among candidates. A Republican counterpart, Holmes Tuttle, was given $30,000 for the same purpose. Donations of $2,000 or more were made to the campaigns of former Governor Ronald Reagan and former Senator George Murphy, Republicans; and the state's own incumbent Senators, Alan Cranston and John Tunney, Democrats.

Northrop and the S.E.C.

To the Editor:

As special counsel to the independent outside directors of the Northrop Corporation in connection with the matters discussed, we would like to point out a serious error in your editorial of April 30, one that should have been apparent from The Times' own April 18 news account of the filing and settlement of the S.E.C. complaint against Northrop.

Contrary to your editorial, the complaint filed by the S.E.C. on April 16 did not accuse Northrop of "diverting at least $30 million to political and other purposes." In its complaint, the S.E.C. said that Northrop had made agreements with various consultants, commission agents and others under which approximately $30 million had been or would be paid to them.

The S.E.C. alleged that these payments were undertaken without adequate records and controls sufficiently to assure that the funds were actually disbursed for the purposes indicated or to document that the services provided were commensurate with the amounts paid. In its press release of April 17, the S.E.C. clearly stated that "no allegation or determination has been made" that any portion of the $30 million was used for political contributions or other improper purposes. The Times story of April 18 made the same point clear.

A committee of five independent outside directors of the Northrop board of directors is currently conducting a special examination of the matters referred to in the S.E.C. complaint. The examination will be both thorough and objective. Upon its completion the report will be made available to the S.E.C. and other appropriate government agencies.

HOWARD P. WILLENS

Washington, May 1, 1975

The writer is a member of a Washington law firm.

SECURITIES AND EXCHANGE COMMISSION
Washington, D. C.

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 11376/April 28, 1975

Admin. Proc. File No. 3-3680

In the Matter of	:
	:
SAMUEL H. SLOAN	:
doing business as	:
SAMUEL H. SLOAN & CO.	:
120 Liberty Street	:
New York, New York	:
(8-15750)	:

FINDINGS AND OPINION OF THE COMMISSION

BROKER-DEALER PROCEEDINGS

Grounds for Remedial Action

Where registered broker-dealer willfully violated Exchange Act's recordkeeping, net capital and reporting provisions and had also been enjoined from violating certain of those provisions as well as those requiring that records be made available for examination by Commission representatives and precluding the initiation of quotations without specified information, held, public interest requires revocation of broker-dealer registration, and bar of sole proprietor from association with any broker-dealer.

APPEARANCES:

Robert W. Taylor for Samuel H. Sloan, doing business as Samuel H. Sloan & Co.; and Samuel H. Sloan, pro se.

William D. Moran, William Nortman, Thomas R. Beirne, Alan M. Rogoff and Jerome M. Selvers, for the Division of Enforcement of the Commission.

I. BACKGROUND

This case deals with the back office operations of a small securities firm in New York City. Finding serious deficiencies in those operations and an injunction based thereon, the administrative law judge revoked the broker-dealer registration of Samuel H. Sloan & Co. ("registrant"), and barred Samuel H. Sloan, registrant's sole proprietor, from association with any broker or dealer. 1/ Respondent's petition for review of that decision brings the case to us. 2/

1/ Registrant became registered with us in May 1970 as a partnership consisting of Sloan and another person. The other partner withdrew from the firm in January 1971, making Sloan its sole proprietor. Sloan thereafter sought to have registrant registered as a sole proprietorship, but this was not accomplished because of defective filings. Hence registrant is still carried on our records as a partnership although now wholly owned by Sloan. Accordingly, we shall for present purposes treat registrant as a sole proprietorship.

2/ Briefs were filed with us by respondent and our Division of Enforcement. Our findings are based upon an independent review of the record.

This administrative proceeding is closely intertwined with a judicial one. On our complaint, the United States District Court for the Southern District of New York preliminarily enjoined respondent on June 24, 1971, with his consent, from effecting transactions while registrant was not in compliance with the recordkeeping and net capital provisions under the Securities Exchange Act. 3/ Thereafter the instant proceeding was instituted. It was based on the preliminary injunction and on specified violations, most of which had also been alleged in the injunctive action. 4/ Following the issuance of the administrative law judge's initial decision which took cognizance of the preliminary injunction, the court in January 1974, after a trial, entered a permanent injunction. 5/

II. RECORDKEEPING VIOLATIONS

We find, as did the administrative law judge, that registrant willfully violated the recordkeeping provisions of Section 17(a) of the Exchange Act and Rule 17a-3 thereunder. 6/ A broker-dealer inspection conducted by the staff in January 1971 (about eight months after registrant's registration became effective) revealed various infractions in this area. Following the inspection, registrant was kept under close surveillance with frequent visits being made by our staff from January to August 1971.

The initial inspection disclosed, among other things, that capital, income and expense items were not properly recorded in registrant's general ledger; that the stock record was not kept current; that there was no account record of bank balances; and that no trial balance had been prepared. Stating that the inspection showed that respondent's records did not comply with our requirements and afforded no basis for establishing his financial position, our staff asked Sloan to produce a trial balance and other data. He furnished something. But no capital computation could be made from what he submitted.

3/ S.E.C. v. Sloan, 71 Civil 2695. Respondent consented to the entry of the preliminary injunction, without either admitting or denying the allegations in our complaint.

4/ The Securities Exchange Act (Sections 15(b)(5) and (7)) authorizes us to impose remedial sanctions if we find it in the public interest to do so and that any respondent (1) is permanently or temporarily enjoined by any court from engaging in any conduct in connection with broker-dealer activities or the purchase or sale of securities, or (2) has willfully violated any provision of the Exchange Act or rules thereunder.

5/ Sloan's appeal from the permanent injunction was dismissed for want of prosecution on March 27, 1975. S.E.C. v. Sloan, Docket No. 74-1436 (C.A. 2).

6/ The administrative law judge also found willful violations of the record-preservation provisions of our Rule 17a-4 under Section 17(a). We do not agree. We do not consider that the failure to preserve records, as required by Rule 17a-4, constitutes a separate and additional infraction once a violation has been found based upon a failure to make those same records, as required by Rule 17a-3. L. C. Fisher Company, Inc., Securities Exchange Act Release No. 10259 (June 29, 1973), 2 SEC Docket 81.

A subsequent examination was made on February 25. It disclosed that the stock record and customer ledger were not up-to-date, and that the income and expense account was not properly maintained. A March 10 examination revealed a capital contribution on the books of $58,175 when, in fact, no such contribution had been made.

On April 8 our investigator was once more in respondent's office. But he could not conduct an examination. According to him, Sloan said "he had no books, per se" -- all he had were debit and credit slips pending the receipt of "machine runs" from a bookkeeping service that used the slips to produce his records. From those slips our investigator was unable to prepare a trial balance. Having received the March 31 trial balance eleven days after his April 8 request for it, he returned to registrant's office on May 6 to verify it. But he could not do so. He was unable to obtain the stock record and daily blotter. On August 10 he went to registrant's office to make an inspection. But the books were unavailable. 7/ When he was able to make an inspection two days later, he found the general ledger posted only through July 31.

The foregoing chronicle shows extensive and persistent recordkeeping deficiencies during the first eight months of 1971. 8/ Moreover, computations of net capital during that year were not prepared as required. 9/ And our staff generally had to make about two or three requests for each trial balance it obtained from registrant. 10/

III. NET CAPITAL VIOLATIONS

We find, as did the administrative judge, that registrant willfully violated Section 15(c)(3) of the Exchange Act and Rule 15c3-1 thereunder by effecting securities transactions and attempting to induce them when registrant's aggregate indebtedness exceeded 2,000% of registrant's net capital.

Net capital deficiencies ranging from $718 to $70,064 were found by the administrative judge on ten dates in 1971 and on an eleventh date in January of 1972. 11/ And respondent does not challenge those findings.

7/ Our inspector testified he was told respondent's accountant had them.

8/ Sloan's claim that he gave our staff certain papers (a deposit slip, a trial balance, and a stock record) has no bearing on these deficiencies.

9/ Net capital computations, as well as trial balances, are required by Rule 17a-3(11) to be "prepared currently at least once a month."

10/ Ultimately, however, it obtained almost all of the trial balances it requested.

11/ He found the following deficiencies on the dates set forth below:

1971	
Jan. 18	$28,016
Jan. 29	11,912
Feb. 26	15,961
June 30	19,222
July 31	70,064
Aug. 31	15,789
Sept. 30	10,729
Oct. 8	$7,545
Nov. 30	4,010
Dec. 31	4,557
1972	
Jan. 31	718

What he attacks is the administrative judge's finding that he engaged in so-called "new" business from the end of July to September. He claims that such business as he did in that period consisted entirely of liquidating his long positions and covering his short positions. That, he says, was permissible under an agreement that he had reached with our staff on July 28, which allowed him to close out existing positions but precluded him from conducting new business.

But Sloan's own testimony shows that he engaged in the securities business in the usual unrestricted sense from January to July 28, 1971. And in January of 1972 he inserted quotations for various securities in the sheets published by the National Quotation Bureau, Inc. In view of registrant's net capital deficiencies in January, February, June and July, 1971, 12/ and in January of 1972, during those periods registrant clearly violated the Exchange Act's net capital requirements. 13/ It is equally clear that those violations were willful 14/ as that term is used for Exchange Act purposes. 15/

IV. NONCOMPLIANCE WITH REPORTING REQUIREMENTS

Respondent's Rule 17a-5 report of financial condition for 1970 and his report of income and expenses under Rule 17a-10 for the same year were admittedly filed late. 16/ Hence registrant willfully violated

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12/ Respondent admits that his net capital was deficient during this period. He states that under his July 28 agreement with our staff "he was to be permitted to correct his ... net capital deficiencies by conducting a limited securities business." (Emphasis added.)

13/ Section 15(c)(3) prohibits a broker-dealer not only from effecting transactions, but from attempting to induce them, in contravention of our rules. Hence a securities dealer whose net capital is deficient is barred from inserting quotations in the sheets.

14/ An act is "willful" within the meaning of that word as used in Section 15(b) of the Exchange Act even if the actor does not intend to violate the law. The act which constitutes the violation is "willful" whenever the actor intends to do that which he did. Tager v. S.E.C., 344 F.2d 5, 8 (1965); Gearhart & Otis, Inc. v. S.E.C., 348 F.2d 798, 802-3 (1965).

15/ We think it unnecessary to reach certain other net capital infractions alleged in the order for proceedings and found by the administrative judge.

16/ Under Rule 17a-5, as then in effect, a broker-dealer was required to file his report of financial condition not more than 45 days after the date of the report. The rule further specified that the date of his first report should be from one to five months after his registration became effective. Since registrant became registered on May 10, 1970, he was required to file his report by November 1970. But he himself says it was not filed until March 1971.

Rule 17a-10 requires that a report of income and expenses and related information be filed not later than 120 days after the close of the calendar year. Although it was required to be filed by April 1971, respondent says he did not do so until December 1971.

Section 17(a) of the Exchange Act and Rules 17a-5 and 17a-10. 17/

V. INJUNCTION

As noted at the outset, the preliminary injunction on which this proceeding was initially based has now become permanent. The permanent injunction, unlike the preliminary one, was entered after a trial. On the basis of the evidentiary record before it, the court found willful violations of our recordkeeping and net capital provisions, in a number of instances the same or substantially the same as those that we have found on the basis of the record before us. 18/ Those judicial findings show a continual pattern of recordkeeping and net capital violations including some between May 1973 and January 1974, a period subsequent to that involved in these proceedings. 19/

VI. OTHER MATTERS

Sloan says that institution of the earlier injunctive action constituted an election by us of the forum in which to proceed against him. 20/ That is not so. 21/ The Exchange Act provides several parallel and compatible procedures for the attainment of its objectives, and resort to one avenue does not preclude the use of another. 22/ The injunctive and administrative remedies serve different purposes, one restrains further violative

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17/ Registrant also willfully violated Section 17(a) of the Exchange Act and our Rule 17a-11 thereunder from September 15, 1971 (the date on which that rule went into effect) until January of 1972. That rule requires that a broker-dealer give the Commission telegraphic notice of his net capital deficiency on the day it occurs and, within 24 hours, file a report of financial condition. The administrative judge found that registrant never furnished any such notice or report. And no exception has been taken to this finding.

18/ 369 F. Supp. 996 (1974).

19/ Among other things, the court found that since August 1973 (the opinion issued in January 1974) respondent had not made his books and records available for inspection by our staff, "although numerous efforts were made by the Commission to arrange such an inspection." It also found net capital violations in May and August 1973.

20/ He also asserts that attorneys on our staff engaged in unprofessional conduct. But most of these charges relate to the injunctive proceedings. Hence they are irrelevant here. Nothing has been alleged that goes to the merits of the matter before us.

21/ Kamen & Company, 43 S.E.C. 97, 108 n. 17 (1966); A. G. Bellin Securities Corp., 39 S.E.C. 178, 186 (1959). See also Lile & Co., Inc., 42 S.E.C. 664, 670 (1965). Compare United States v. Kordell, 397 U.S. 1, 11 (1970): "It would stultify enforcement of federal law to require a governmental agency ... invariably to choose either to forgo recommendation of a criminal prosecution once it seeks civil relief, or to defer civil proceedings pending the ultimate outcome of a criminal trial."

22/ See Clinton Engines Corporation, 41 S.E.C. 408, 412-413 (1963); A. J. White & Co., Securities Exchange Act Release No. 10645 (February 15, 1974), 3 SEC Docket 550.

activity, the other seeks to determine whether it is in the public interest to exclude somebody from the securities business or to limit his activities in it. Far from being a barrier to administrative action, an injunction is an express and distinct ground for such action. 23/

VII. PUBLIC INTEREST

Respondent argues that the revocation and the bar imposed by the administrative judge are excessive and unwarranted. We disagree. 24/ Sloan's

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23/ Sections 15(b)(5) and (7) of the Exchange Act summarized in n. 4, supra.

Respondent argues that the text of the Exchange Act is of no moment because the whole thing is unconstitutional. It is not for us to pass on that. Having been instructed by Congress to administer the Act, we are constrained to assume that statute is valid unless and until the courts hold otherwise. See Milton J. Wallace, Securities Exchange Act Release No. 11252 (February 14, 1975), 6 SEC Docket 300, 301; Mutual Fund Distributors, Inc., 41 S.E.C. 174, 181 (1962); Walston & Co., 5 S.E.C. 112, 113 (1939). Nevertheless, we think it appropriate to note that respondent's constitutional contentions are nothing less than an attack on all federal administrative law since they assume that Congress cannot vest this and other federal agencies with quasi-legislative and quasi-judicial powers, and that respondent cites nothing (other than his own ideas about the Constitution) in support of this radical position. We also note that the Supreme Court seems to take a different view. See Butz v. Glover, 411 U.S. 182 (1973) where the court cited with approval Hiller v. S.E.C., 429 F.2d 856, 858-859 (C.A. 2, 1970) and Dlugash v. S.E.C., 373 F.2d 107, 110 (C.A. 2, 1967). 411 U.S. at 187.

24/ Respondent says that he rejected a settlement calling for a 60-day suspension suggested by our staff prior to the hearings. But the asserted willingness of our staff to recommend that we accept a 60-day suspension for purposes of settlement (only we, not our staff, can accept an offer of settlement -- see Rule 8(a) of our Rules of Practice) is irrelevant. As we said in Haight & Company, 44 S.E.C. 481, 512-513 (1971), affirmed without opinion (C.A.D.C. June 30, 1971): "In settlement cases, where as a rule there is no admission of violations, we take into account pragmatic considerations such as the avoidance of time-and-manpower-consuming adversary proceedings." Here, however, the record before us is fully developed. And it establishes various violations. Cf. Security Planners Associates, Inc., 44 S.E.C. 738, 743-744 (1971). Sloan's idea that a settlement proposal by our staff sets some sort of a ceiling on the sanction that can be imposed after a record has been developed is fallacious. Such a rule would undermine the settlement process that the Administrative Procedure Act seeks to encourage. That statute provides that "The agency shall give all interested parties opportunity for - (1) the submission and consideration of ... offers of settlement, or proposals of adjustment. ..." 5 U.S.C. § 554 (c). See also First Detroit Securities Corporation, Securities Exchange Act Release No. 10706 (March 27, 1974), 3 SEC Docket 752, 753. If respondents were assured that a trial could never result in a sanction more severe than the one suggested by our staff in settlement discussions, they would have little, if any, incentive to settle. And even if we were otherwise inclined to give some slight weight to an abortive settlement proposal made by our staff, we could not properly do so in this case. Here we have facts and circumstances before us that were unknown to and could not possibly have been foreseen by our staff at the time of the settlement talks.

violations are neither trivial nor technical. They involve flagrant and long-continued breaches of significant duties imposed on persons in the securities business. 25/

Hence we find, as did the administrative judge, that it is in the public interest to revoke registrant's broker-dealer registration 26/ and to bar Sloan himself from association with any broker or dealer. In arriving at that conclusion we have given some weight to the fact that in January of this year Sloan was again enjoined on our complaint. That second injunction:

> (A) Restrains Sloan from removing, destroying, or altering the books and records required by Section 17(a) of the Exchange Act and our rules thereunder;
>
> (B) Orders him to permit our staff to make an immediate examination of those records in an easily accessible place; and
>
> (C) Restrains him from initiating quotations for over-the-counter securities when he lacks the information required by our Rule 15c2-11 under Section 15(c)(2) of the Exchange Act. 27/

Sloan's own papers in the second injunctive suit show his continuing disposition to disregard or defy the rules governing registered broker-dealers. He glories in having submitted "more than 250" quotation applications "in the face of an admonition by the S.E.C. that the submission of these forms constituted a violation of its rules." And in an affidavit submitted to the Court of Appeals he said:

> "I do not intend to comply with the ... injunctive order. I am sure that both Judge Ward [the district judge] and the S.E.C. realize that this is the case. However, I would much prefer to have this matter decided

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25/ See Blaise D'Antoni Associates, Inc. v. S.E.C., 289 F.2d 276, 277, (C.A. 5, 1961) ("The net capital rule is one of the most important weapons in the Commission's arsenal to protect investors."); Fox Securities Company, Inc., Securities Exchange Act Release No. 10475, 2 SEC Docket 667, 669 (November 1, 1973) ("accurate and current records are essential to enable a broker-dealer to determine compliance with the net capital and other requirements."); Wanda C. Olds, 37 S.E.C. 23, 26 (1956) ("The requirements that books be kept current and financial reports be filed on time and in proper form are important"); Scientific Investors Corporation, 41 S.E.C. 618, 619 (1963) ("Reports are important not only to inform investors but because they may open avenues of inquiry which may well lead to collateral information having a direct bearing upon the broker-dealer's compliance with other rules of the Commission).

26/ We therefore deny his request for withdrawal of registrant's broker-dealer registration.

27/ S.E.C. v. Sloan, 74 Civil 5729 (U.S.D.C., S.D.N.Y.). Sloan's appeal from the second injunction is pending before the United States Court of Appeals for the Second Circuit. Yet the fact remains that a court of competent jurisdiction found the second injunction appropriate and that it did so over Sloan's vehement opposition. That is a circumstance to be considered in assessing the requirements of the public interest. Compare Summit Equities Corp., Securities Exchange Act Release No. 10366 (August 28, 1973), 2 SEC Docket 347.

> ... quickly so as to reduce the likelihood that I will actually be held in contempt. ... Clearly, if I am actually held in contempt, I will suffer irreparable harm." 28/

An appropriate order will issue.

By the Commission (Chairman GARRETT and Commissioners LOOMIS, EVANS and SOMMER); Commissioner POLLACK not participating.

George A. Fitzsimmons
Secretary

28/ The affidavit in which this statement appears was made in support of Sloan's unsuccessful application for a stay of the second injunction. Sloan's earlier petition to the Court of Appeals for a writ of mandamus against the district judge is in the same vein. After stating that "the S.E.C. has known ... that the petitioner was not going to make his books and records readily available," he goes on to say: "It is no secret that the petitioner has not paid ... any ... S.E.C. assessment in more than two years. It is no secret that the petitioner has not filed any financial statements with the S.E.C. for two years."

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 11376/April 28, 1975

Admin. Proc. File No. 3-3680

In the Matter of	:
	:
SAMUEL H. SLOAN	:
doing business as	:
SAMUEL H. SLOAN & CO.	:
120 Liberty Street	:
New York, New York	:
(8-15750)	:

ORDER IMPOSING REMEDIAL SANCTIONS

Proceedings were instituted under the Securities Exchange Act to determine what, if any, remedial action is appropriate in the public interest with respect to Samuel H. Sloan, doing business as Samuel H. Sloan & Co.

Hearings were held before an administrative law judge. He submitted an initial decision. Respondent's petition for review was granted, and briefs were filed by him and by the Commission's Division of Enforcement. Respondent requested withdrawal of the broker-dealer registration of Samuel H. Sloan & Co.

The Commission has this day issued its Findings and Opinion. On the basis of such Findings and Opinion, it is

ORDERED that the request for withdrawal of the registration of Samuel H. Sloan & Co. as a broker and dealer be, and it hereby is, denied; and it is further

ORDERED that the aforesaid broker-dealer registration be, and it hereby is, revoked; and it is further

ORDERED that Samuel H. Sloan be, and he hereby is, barred from being associated with any broker or dealer.

By the Commission.

George A. Fitzsimmons
Secretary

H. Marjorie Sloan being duly sworn deposes and says that she is not a party to this action, is over 21 years of age and resides at 917 Old Trents Ferry Road, Lynchburg, Virginia, 24503, and that on June 20, 1975 she served the within notice of motion and motion by mailing a true copy of same

To: Ray Garrett, Jr.
A. A. Sommer, Jr.
Philip A. Loomis, Jr.
Irving M. Pollack
John R. Evans
George A. Fitzsimmons
Paul Gonson
Thomas L. Taylor, III
500 N. Capitol Street
Washington, D. C. 20549

William Nortman
Securities & Exchange Commission
26 Federal Plaza
New York, N. Y.

H. Marjorie Sloan

Sworn to before me this

day of June, 1975

NOTARY PUBLIC

Commission expires 2/5/76

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION

Plaintiff

-against-

SAMUEL H. SLOAN, Individually and d/b/a SAMEUL H. SLOAN & CO.

Defendants.

74 Civil 5729 (RJW)

NOTICE OF MOTION

AND DEMAND FOR JURY TRIAL

PLEASE TAKE NOTICE that upon the annexed affidavit of Samuel H. Sloan sworn to the 29th day of July, 1975 the undersigned will move this court on the 12th day of August, 1975 (1) for eargument of this courts decision of July 22, 1975 in which the undersigned was adjudged to be in contempt of court, (2) for a hearing and/or trial by jury on the motion for contempt and (3) for an order pursuant to 28 U.S.C. 144 and 28 U.S.C. 455 recusing the Hon. Robert J. Ward from proceeding further in this case or the grounds that he has demonstrated bias and prejudice against the pro se defendant and that, by virtue of his conduct in this case, he has demonstrated his lack of regard for the oath prescribed by 28 U.S.C. 453 and his unfitness to be a judge of the United States District Court, (4) in the event that parts (1), (2) and (3) of this motion are denied for leave pursuant to 28 U.S.C. 1292(b) from that part of the decision and order of this court which is interlocutory in character and (5) for a stay pursuant to Rule 8(a) R. App. P.

Dated: Lynchburg, Virginia
July 28, 1975

Yours, etc.

Samuel H. Sloan
917 Old Trents Ferry Road
Lynchburg, Virginia 24503
(804) 384-1207

To: Securities & Exchange Commission
26 Federal Plaza
New York, N. Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION Plaintiff -against- SAMUEL H. SLOAN, Individually and d/b/a SAMUEL H. SLOAN & CO. Defendants.	74 Ci 5729 (RJW) AFFIDAVIT IN SUPPORT OF MOTION

COMMONWEALTH OF VIRGINIA)
) ss.:
CITY OF LYNCHBURG)

SAMUEL H. SLOAN, being duly sworn, deposes and says:

1. On July 22, 1975 this Court adjudged me to be in contempt of court and ordered that my books and records be removed to a place where they may be inspected by representatives of the Securities & Exchange Commission. ("S.E.C."). I now ask for reargument on this motion.

2. As far as I am aware the S.E.C. has no interest in examing my books and records. If they have such an interest, they have not communicated it to me. On July 25, 1975, the day I received the decision of this court in the mail, I called S.E.C. staff attorney Thomas L. Taylor,III and asked if and when the S.E.C. would be coming to inspect my books and records. Mr. Taylor replied that the S.E.C. had no plans to do so. He indicated that he thought that under the circumstances the court would direct the U.S. Marshall to come to Lynchburg and get my books and records, It should be noted, incidentally, that all of the attorneys who originally expressed an interest in examining my books and records and who instituted this lawsuit are no longer employed by the New York Regional Office of the S.E.C.

3. Several months ago I inquired of Mr. Taylor [illegible] whether the motion for contempt had been decided. He told me that he did not expect that the motion for contempt would ever be decided by the court since the S.E.C. had not proceeded via an order to show cause. He stated that the S.E.C. had merely brought this motion for the purpose of having it before the court in case the S.E.C. wanted a decision at some time in the future.

4. In any event, it is apparent that the S.E.C. has no present interest in examining my books and records. This, in part, provided the basis for my motion to dismiss this proceeding as moot. It is submitted that this court was in error and that my motion to dismiss should have been granted.

5. Furthermore, at no time has the S.E.C. desired to have any books and records removed to a place where they could be inspected by the S.E.C. This has come up in connection with the previous lawsuit. In August and September, 1973, my then attorney, Robert W. Taylor, called the S.E.C. and offered to turn over all of my books and records to the S.E.C. This offer was refused by the S.E.C. The S.E.C. stated that it was not willing to act as a storehouse for the books and records of brokers and dealers. Instead, the S.E.C. warted to be able to examine my books and records with me present. This was impossible because I was in Europe at the time although my books and records were readily available to the S.E.C. at my office at 11 Broadway New York, N.Y. The point remains, however, that the S.E.C. is not interested in the removal of my books and records and did not request this relief in the ad damnum of its complaint.

6. In connection with this motion, I am requesting a jury trial. Since it appears that this Court plans to

fine or imprison me at some date in the future there can be no question that I am entitled to a trial by jury in accordance with the Sixth and Seventh Amendments to the Constitution of the United States.

7. Finally, I ask that Judge Ward recuse himself. I realize that I have made this request previously. However, I am repeating this motion because the Hon. Robert J. Ward has, by his acts, clearly demonstrated his unfitness to be a federal judge. It is true that the principle that a judge may not be removed because of inability in both sound and well established by the Constitution. Chandler v Judicial Council 398 U.S. 74 (1970). However, a judge may be removed for inability in a particular case. Occidental Petroleum Corp. v Chandler 303 F. 2d 55 (10 Civ. 1962) (en banc), cert. denied 383 U.S. 936 (1966); United States v John Anthony Taylor 487 F. 2d 307 (2d Cir. 1973). In the case at the bar, the judge presently assigned to this case has displayed bias, prejudice and inability and has further demonstrated that he is unmindful of the oath prescribed by 28 U.S.C. 453.

8. At the outset, this case was assigned to Judge Ward illegally by virtue of false representations made to the co-ordinating clerk by the S.E.C. attorneys. In particular, the S.E.C. attorneys falsely represented that there was a "pending related case" before Judge Ward bearing the docket number 71 Civil 2695. That representation was untrue in that a final judgment had been entered that case and that judgment was on appeal. The S.E.C. attorneys also ommitted to state that there was pending related case before Judge Griesa, 74 Civil 2792, in which the S.E.C. had just requested an extension

of time to move to dismiss. Thus, by a tactical manuver, and by making false statements of material fact to the coordinating clerk, the S.E.C. was able to cause the instant case to be assigned to a district court judge known to be favorable to the S.E.C. Clearly, this was a violation of the due process clause of the Fifth Amendment.

9. It is apparent that the judge himself acquiesced to this proceedure. Rule 4(A) of the Calendar Rules for the Southern District of New York requires that all civil actions and proceedings be assigned to a judge by lot. This was not done in this case. Rule 13 provides that related cases be assigned to the same judge by the coordinating Clerk provided there is agreement between the judge to whom the new case was assigned by lot and the judge to whom the older case was assigned. This was not done here since this case was never assigned by lot in the first instance.

10. In the previous trial, 71 Civil 2695, Judge Ward displayed prejudice by shouting at me on numerous occasions for no apparent reason, by stomping around the courtroom while I was testifying or attempting to examine witnesses, by bearing his teeth, by directing the order in which I was required to call my witnesses, by "closing" my case, by displaying prosecutional zeal, and by generally displaying a lack of judicial temperment.

11. In the case at the bar, Judge Ward has again displayed prejudice. He required me to return from Iceland on January 8, 1974 to attend a hearing scheduled for that date. However, when I appeared, it turned out that he was away on

vacation and would not return for a week. On January 17, 1975, when the so-called hearing was finally held, it is apparent that Judge Ward had communicated with the S.E.C. on an ex parte basis and directed them to have their witnesses, Ira Spindler and Thomas Dolan, present in the courtroom on that date while at the same time advising the S.E.C. that it would not be necessary to call them to testify.

12. At the so-called hearing (Tr 44-5) Judge Ward stated:

> "so far, all of your discussion has been standing back there, not under oath, making statements which have no probative value, and I would suggest, you are not an officer of this court whose statements I can accept as an officer of the court. You are appearing pro se."

13. It is apparent from this statement and from many similar statements made by Judge Ward at the previous trial that he is prejudiced against the defendant because the defendant is appearing pro se and Judge Ward is attempting to punish the defendant for not hiring an attorney. While refusing to accept representations of the defendant on the ground that he is pro se, Judge Ward has willingly accepted representations from the S.E.C. attorneys even though, in many cases, these representations have been demonstrably untrue. Furthermore, Judge Ward has protected these S.E.C. attorneys from having their lies exposed by refusing to permit the defendant to call them to testify under oath.

14. For all of these reasons, Judge Ward should recuse himself from proceeding further in this case. Furthermore, since the S.E.C. has no desire to examine the books and records of the defendant, the decision adjudging the defendant

to be in contempt of court should be reversed.

15. It should be noted that the defendant has moved Judge Ward to recuse himself on two previous occasions The first time on December 30, 1974, Judge Ward agreed to recuse himself immediately (Tr 32). Later, Judge Ward changed his mind. At the so-called hearing, Judge Ward critisized the defendant for not submitting an affidavit. It is true that 28 U.S.C. 144 requires the submission of an affidavit. However, in lieu of Judge Ward's prior representation that he would recuse himself from this case, an affidavit should have been unnecessary. In any event, under 28 U.S.C. 144 I am entitled to submit one affidavit as I am doing in this case.

16. As the court is aware, earlier this year I was struck by an automobile with the result that both my legs were broken. In fact, the S.E.C. moved for contempt while I was in the hospital in Plattsburgh, N. Y. I am still unable to walk normally. For this reason this case should be transfered to the Western District of Virginia, Lynchburg Division.

WHEREFORE, I respectfully pray that (1) decision of this court dated July 23, 1975 should be reversed (2) this matter should be set down for a hearing and/or trial by jury and (3) Judge Ward should recuse himself from this case.

Samuel H. Sloan

Sworn to before me this
29th day of July, 1975

Alice P. White
NOTARY PUBLIC

My Commission expires
June 7, 1977

H. Marjorie Sloan, being duly sworn, deposes and says that she is not a party to this action, is over 21 years of age and resides at 917 Old Trents Ferry Road in Lynchburg, Virginia 24503 and that on July 31, 1975 she served the within Notice of Motion by mailing a true copy of the same to:

Securities & Exchange Commssion
26 Federal Plaza
New York, N. Y. 10007

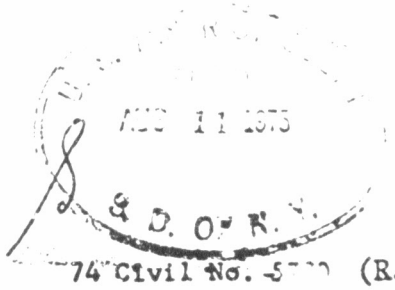
H Marjorie Sloan
H. Marjorie Sloan

Sworn to before me this
31st day of July, 1975

Mary P. Mills
NOTARY PUBLIC

My Commission expires 6/7/77.

UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF NEW YORK



SECURITIES AND EXCHANGE COMMISSION Plaintiff, v. SAMUEL H. SLOAN, individually and d/b/a SAMUEL H. SLOAN & CO. Defendant,	74 Civil No. 5[illegible] (RJW) AFFIDAVIT IN OPPOSITION TO DEFENDANT'S MOTIONS FOR REARGUMENT OF THIS COURT'S JULY 22 ADJUDICATION OF CONTEMPT, FOR AN ORDER RECUSING THE DISTRICT JUDGE AND FOR OTHER RELIEF.

City of Washington)
) ss:
District of Columbia)

THOMAS L. TAYLOR III, being duly sworn, deposes and says:

1. I am an attorney in the Office of General Counsel of the Securities and Exchange Commission ("the Commission") and am assigned oversight responsibilities with respect to the captioned injunctive action. In addition, I am primarily responsible for the conduct of litigation before the United States Court of Appeals for the Second Circuit in a total of six cases involving the defendant.

2. I make this affidavit in opposition to the defendant's motions for reargument with respect to this Court's order of July 22, 1975, adjudging the defendant to be in contempt of this Court's order of preliminary injunction entered on January 17, 1975. This affidavit is based upon my personal knowledge of the facts and a review of correspondence between Mr. Sloan and members of the Commission's staff and affidavits by members of the staff previously filed in this action.

3. In his affi vit in support of his motion for reargument, the defendant has inaccurately represented conversations with me with respect to the Commission's application for a contempt citation. While the defendant states that I told him that the Commission had no plans to inspect his books and records, in fact, I told Mr. Sloan in the course of the conversation to which he apparently refers, that I had not yet seen the Court's order adjudicating him in contempt, that I had not yet communicated with the staff in the New York Regional Office with respect to that order and that we had not yet formulated our plans with respect to effectuation of that order requiring that Mr. Sloan's books and records be removed to a location at which the Commission's staff could have access to them. At no time did I, as the defendant's affidavit implies, indicate that the Commission had no interest in seeing his books and records. Indeed, with a view toward the inspection of the books and records, I questioned Mr. Sloan with respect to their location. In response to these questions Mr. Sloan indicated that the books and records of Samuel H. Sloan and Co. had been moved to Lynchburg, Virginia.

4. I have never expressed the view to Mr. Sloan that I doubted that the Commission's motion for contempt would ever be decided. I did indicate to him that the Commission had not moved by order to show cause because the staff had learned that he had been incapacitated in an automobile accident just prior to the filing of its motion for a contempt citation. I expressed the view that he would probably not be compelled to appear in court with respect to that motion during the period of his physical incapacity.

5. The Commission's interest in inspecting the defendants books and records has been repeatedly demonostrated and, indeed, this action was instituted in part because of Mr. Sloan's refusal to permit such an inspection. Members of the staff made attempts to examine the defendant's books and records both before it sought relief before this Court and after this Court's entry of a mandatory injunction requiring that the staff be given access. See, Affidavit In Support of the Commission's Application For Contempt Citation, dated March 24, 1975.

6. In the opinion of the Commission's counsel, there is no occasion for reargument of this Court's adjudication of contempt. Since the Order issued by this Court is calculated to compel compliance with its injunction and imposes no penalties, there is no occasion for a trial by jury. In view of Mr. Sloan's past refusal to comply, the Court's order should remain in force.

7. The defendant has previously moved this Court for an order recusing Judge Ward from further participation in this case. That Motion was denied from the bench on January 17, 1975. Defendant has shown no reason why the same motion should be heard again.

THOMAS L. TAYLOR, III

Sworn to before me this
8th day of August, 1975.

NOTARY PUBLIC

My Commission Expires Dec 31, 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION

Plaintiff,

- against -

SAMUEL H. SLOAN, Individually and d/b/a SAMUEL H. SLOAN & CO.

Defendants.

74 Civil 5729 (RJW)

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

RALPH PERNICK, being duly sworn, deposes and says:

1. I am an attorney employed by the United States Securities and Exchange Commission in its New York Regional Office.

2. On August 11, 1975 I served a copy of the within Affidavit by depositing a true copy of same in a prepaid envelope in an official depository under the exclusive care and custody of the United States Postal Service addressed to the following location:

Samuel H. Sloan
c/o 917 Old Trent's Ferry Road
Lynchburg, Virginia 24503

Ralph Pernick
RALPH PERNICK

Sworn to before me this
11th day of August, 1975

NOTARY PUBLIC

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UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION

Plaintiff,

-against-

SAMUEL H. SLOAN, individually and d/b/a SAMUEL H. SLOAN & CO.

Defendant,

74 Civil 5729 RJW

REPLY AFFIDAVIT

City of Lynchburg)
)
Commonwealth of Virginia)

Samuel H. Sloan, being duly sworn deposes and says:

1. With respect to the telephone conversations between Mr. Taylor and myself I think it should be pointed out that Mr. Taylor is employed in the S.E.C. Office of General Counsel in Washington, D.C. His only connection with this case, as far as I know, is to write an appeal brief in behalf of the S.E.C. and to handle other matters connected with the appeal such as stipulations, designations and the like. As far as I am aware Mr. Taylor has no involvement with this lawsuit at the district court level although, because he is handling the appeal, it is reasonable to assume that he is kept informed of the progress of proceedings in the district court.

2. The point is that all of my numerous conversations with Mr. Taylor over the past several months have been concerned with the six appeals involving myself and the S.E.C. To the extent that we have discussed matters in the district court, these discussions have been relative to present or future ap-

peals. For example, the conversation which Mr. Taylor describes in his affidavit occurred when I called him concerning a designation of what would constitute the appendix of one of the appeals in the Court of Appeals. Mr. Taylor inquired as to whether I would appeal the recent contempt order. I replied that as far as I knew there was no order, that the decision of the court had said "settle order", and that I doubted that the S.E.C. had any plans to come down to Virginia and look at my records. At this point Mr. Taylor asked whether my records were in Virginia and I replied affirmatively.

3. From reading Mr. Taylor's affidavit one might conclude that he inquired about the whereabouts of my records in the role of an enforcement officer. This is not the case. Mr. Taylor has repeatedly disavowed any interest in getting involved in the enforcement aspect of this lawsuit.

4. The fact remains that the only contact I have had with the Enforcement Division of the New York Regional Office of the S.E.C. from January 17, 1975 to the present was in the form of a telephone call from one Ralph Pernick, who informed me that he was not a member of the bar. That telephone call came a few days before my accident. Originally there were three attorneys assigned to my case but Mr. Selves and Mr. Beirne are no longer employed by the S.E.C. and Mr. Nortman, I understand, has been transferred to the Miami Regional office of the S.E.C. Thus, I have had no contact with any of the attorneys presently assigned to this case, they have made no effort to contact me, and I doubt seriously

if any of them have a personal inclination to pursue this lawsuit.

Samuel H. Sloan

Sworn to before me this
20th day of August, 1975

NOTARY PUBLIC

My commission expires Dec 14, 1977

City of Lynchburg)
) ss:s
Commonwealth of Virginia)

Palina V. Kristjansdottir being duly sworn, deposes and says that she is not a party to this action, is over 21 years of age and resides at 917 Old Trents Ferry Road in Lynchburg, Virginia 24503 and that on August 20, 1975 she served the within affidavit by mailing a true copy of the same to Securities and Exchange Commission, 26 Federal Plaza, New York, New York.

Palina V. Kristjansdottir

Sworn to before me this
20th day of August, 1975

NOTARY PUBLIC

My commission expires Dec 14, 1977

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FILED
U.S. DISTRICT COURT
SEP 2 42 AM '75

SECURITIES AND EXCHANGE COMMISSION

Plaintiff,

- against -

SAMUEL H. SLOAN, Individually and d/b/a SAMUEL H. SLOAN & CO.

Defendants.

74 Civil 5729 (RJW)

PLAINTIFF'S ANSWERS TO DEFENDANTS' INTERROGATORIES

In response to the Interrogatories of defendants Samuel H. Sloan ("Sloan") and Samuel H. Sloan & Co. ("Sloan & Co."), and pursuant to the order of the Court dated August 4, 1975 that the Securities and Exchange Commission ("Commission") answer defendants' Interrogatories 1, 2, 3, 4, 6, and 7, the Commission hereby submits its answers pursuant to Rule 33 of the Federal Rules of Civil Procedure.

Question 1: "State separately each and every act and practice in which plaintiff contends the defendants have engaged, are engaged or are about to engage which constitute violations of Sections 15(c)(2) and 17(a) of the Securities Exchange Act of 1934 and Rule 17 C.F.R. 240.15c2-11 and 17 C.F.R. 240.17a-4 promulgated thereunder."

Answer: (a) Section 15(c)(2) and Rule 15c2-11 thereunder--the defendant Sloan has submitted at least 293 Form 211s with the National Quotation Bureau, copies of which are in the possession of this office, which indicate that the defendants neither knew nor possessed the information required by the Rule. The Commission will, pursuant to Rule 33(c) of the Federal Rules

of Civil Procedure, afford the defendants, upon their request, a reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries.

(b) Section 17(a) and Rule 17a-4 thereunder--the defendants have refused to permit immediate examination in an easily accessible place by examiners and other representatives of the Commission of the books and records of Sloan and Sloan & Co.

Question 2: "State whether any of the defendants are registered brokers or dealers with the Securities and Exchange Commission and whether a broker dealer withdrawal request has been filed and the date of said filing."

Answer: On April 28, 1975, the Commission revoked the broker-dealer registration of Sloan & Co., and barred Sloan from association with any broker or dealer (Securities Exchange Act Release No. 11376). The defendants have petitioned the United States Court of Appeals for the Second Circuit for review of this order; on May 13, 1975, that Court declined the defendants' motion for a stay pending appeal (Dkt. No. 75-4087).

On information and belief, on September 17, 1973, the defendants filed with the Commission a Form BDW in which they sought to withdraw their registrations as broker-dealers. Such withdrawal did not become effective, since, pursuant to Rule 17 C.F.R. 240.15b6-1, the Commission had previously, on April 25, 1972, instituted administrative proceedings against the defendants to determine whether the defendants had violated the federal securities laws, and to determine what remedial action, if any, might be appropriate in the public interest.

Question 3: "With respect to each and every quotation published in the pink sheets of the National Quotation Bureau Inc. at the request of Samuel H. Sloan & Co. which plaintiff contends was in violation of Rule 17 C.F.R. 240.15c2-11, state the exact name of the issuer of security, the exact title and class of the security, the quotation published, whether it was a bid or an asked quotation, the date on which the quotation was published, whether the SEC had ever suspended trading in that security and, if so the dates when the suspension of trading commenced and terminated."

Answer: Defendants are referred to plaintiff's answer to question 1. Moreover, for the purpose of deriving the answer to other parts of this question, the Commission will, pursuant to Rule 33(c) of the Federal Rules of Civil Procedure, afford the defendants, upon their request, a reasonable opportunity to examine, audit or inspect the Commission's public records and to make copies, compilations, abstracts or summaries.

Question 4: "With respect to every quotation listed in item three above, state, by reference to the appropriate sub-section of Rule 15c2-11, the manner in which this quotation was manipulative, fraudulent or deceptive."

Answer: According to the terms of Rule 15c2-11, "It shall be a fraudulent, manipulative, and deceptive practice within the meaning of Section 15(c)(2) of the Act, for a broker or dealer to publish any quotation for a security or, directly or indirectly, to submit any such quotation for publication, in

any quotation medium. . .unless [the terms of the Rule are complied with]." An examination of the documents referred to in plaintiff's answer to question 1, reveals, on its face, that the defendants have failed to comply with the terms of Rule 15c2-11.

Question 6: "State the time and dates of all conversations by telephone and in person between Ira Spindler and the defendants and between Thomas Dolan and the defendants and state the substance of all such conversations."

Answer: (a) Upon information and belief, the dates, times, and substance of all conversations between Ira Spindler and Sloan, prior to the commencement of this action, are a matter of public record. See Spindler affidavit of December 30, 1974; Spindler affidavit of March 24, 1975; and transcript of evidentiary hearing held on January 17, 1975.

(b) Upon information and belief, the dates, times, and substance of all conversations between Thomas F. Dolan and Sloan, prior to the commencement of this action, are a matter of public record. See Dolan affidavit of December 30, 1974.

Question 7: "State the time and date of each conversation by telephone and in person between Jerome Selvers and the defendants or their agents between December 30, 1974 and January 8, 1975 and state the substance of each conversation."

Answer: Upon information and belief, the dates, times and substance of all conversations between Jerome M. Selvers, Esq. and Sloan or his agents, between December 30, 1974 and January

8, 1975, are a matter of public record. See Selvers affidavit of December 30, 1974 and Selvers affidavit of January 8, 1975.

Dated: New York, New York
September 2, 1975

Respectfully submitted,

WILLIAM D. MORAN
Regional Administrator

Attorney for Plaintiff
SECURITIES AND EXCHANGE COMMISSION
New York Regional Office
26 Federal Plaza
New York, New York 10007
Telephone No.: (212) 264-1636

To: Samuel H. Sloan
c/o 917 Old Trent's Ferry Road
Lynchburg, Virginia 24503

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

RALPH PERNICK, being duly sworn, deposes and says:

1. I am employed as an attorney by the Securities and Exchange Commission in its New York Regional Office.

2. I have read the foregoing Plaintiff's Answers to Defendants' Interrogatories and know the contents thereof; that the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters I believe it to be true.

RALPH PERNICK

Sworn to before me this
2nd day of September, 1975

NOTARY PUBLIC

HENRY WONG
Notary Public, State of New York
No. 31-4533135
Qualified in N... County
Commission E... 30, 197...

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION Plaintiff, - against - SAMUEL H. SLOAN, Individually and d/b/a SAMUEL H. SLOAN & CO. Defendants.	74 Civil 5729 (RJW) AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

RALPH PERNICK, being duly sworn, deposes and says:

1. I am an attorney employed by the United States Securities and Exchange Commission in its New York Regional Office.

2. On September 2, 1975 I served a copy of the within Plaintiff's Answers to Defendants' Interrogatories by depositing a true copy of same in a prepaid envelope in an official depository under the exclusive care and custody of the United States Postal Service addressed to the following location:

Samuel H. Sloan
c/o 917 Old Trent's Ferry Road
Lynchburg, Virginia 24503

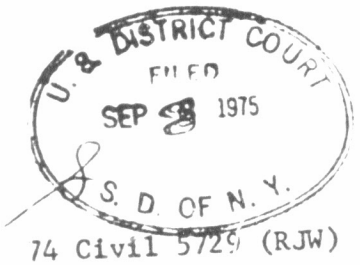
RALPH PERNICK

Sworn to before me this
2nd day of September, 1975

NOTARY PUBLIC

HENRY WONG
Notary Public, State of New York
No. 31 4[illegible]35
Qualified in [illegible] County
Commission Expires [illegible] 30, 1977

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



SECURITIES AND EXCHANGE COMMISSION

Plaintiff,

-against-

SAMUEL H. SLOAN, Individually and d/b/a SAMUEL H. SLOAN & CO.

Defendants.

74 Civil 5729 (RJW)

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

STUART PERLMUTTER, being duly sworn, deposes and says:

1. I am an attorney employed by the United States Securities and Exchange Commission in its New York Regional Office.

2. On September 5, 1975, I served a certified copy of the Order of Civil Contempt, issued by this Court on September 3, 1975, upon the defendants by causing same to be mailed to the following location:

Samuel H. Sloan
c/o 917 Old Trent's Ferry Road
Lynchburg, Virginia 24503

Stuart Perlmutter
STUART PERLMUTTER

Sworn to before me this
8th day of September, 1975.

NOTARY PUBLIC

DOUGLAS P. JACOBS
Notary Public, State of New York
No. 70578/0
Qualified in Kings County
Commission Expires March 30, 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION Plaintiff, - against - SAMUEL H. SLOAN, Individually and d/b/a SAMUEL H. SLOAN & CO. Defendants.	74 Civil 5729 (RJW) ORDER OF CIVIL CONTEMPT

Plaintiff Securities and Exchange Commission ("Commission") having moved by notice of motion dated March 24, 1975 for an order of civil contempt against Samuel H. Sloan ("Sloan") and having submitted an affidavit and a memorandum of law in support thereof, and the Court having filed a Memorandum dated July 22, 1975, and it being established to the satisfaction of the Court that:

1. On December 30, 1974 plaintiff Commission filed a Complaint seeking preliminary and permanent injunctions and certain other relief against the defendants. On that date the Court ordered defendants Sloan and Samuel H. Sloan & Co. ("Sloan & Co.") to permit immediate examination in an easily accessible place by examiners and other representatives of the Commission of the books and records of Sloan and Sloan & Co.

2. On January 8, 1975, the Honorable Thomas P. Griesa, United States District Judge, extended said order up to and including January 17, 1975.

3. On January 17, 1975, the Court held an evidentiary

hearing on the Commission's application for a preliminary injunction, and issued an Order of Injunction ordering, inter alia, Sloan and Sloan & Co. to permit immediate examination in an easily accessible place by examiners and other representatives of the Commission of the books and records of Sloan and Sloan & Co.

4. On January 20, 1975 the defendants filed a notice of appeal to the United States Court of Appeals for the Second Circuit from said Order of Injunction and moved the Court of Appeals by notice of motion filed January 23, 1975 for a stay of said Order of Injunction pending appeal. The Court of Appeals denied the defendants' motion for a stay on February 13, 1975.

5. The defendant Sloan refused to permit examiners of the Commission to inspect the books and records of Sloan & Co., and the Commission moved by notice of motion dated March 24, 1975 to adjudge Sloan in contempt of this Court for wilful violation of the Court's Order of Injunction dated January 17, 1975.

6. The Court filed its memorandum dated July 22, 1975 in which it was found that the defendant Sloan wilfully violated this Court's order of preliminary injunction dated January 17, 1975 by refusing to permit inspection of the books and records of Samuel H. Sloan & Co. by representatives of the Commission.

7. Defendant Sloan moved by notice of motion dated July 28, 1975 for, inter alia, reargument of this Court's decision

of July 22, 1975 and for a hearing and/or trial by jury on the motion for contempt. On August 18, 1975 the Court filed its memorandum denying said motion.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the defendant Sloan is in civil contempt of this Court for wilful failure to comply with the Order of Injunction dated January 17, 1975 by refusing to permit immediate examination in an easily accessible place by examiners and other representatives of the Commission of the books and records of Sloan & Co., and it is further

ORDERED, ADJUDGED AND DECREED that the defendant Sloan be and he is hereby granted ~~ten (10)~~ Twenty (20) days from date of this Order within which to purge his contempt by permitting immediate examination in an easily accessible place by examiners and other representatives of the Commission of the books and records of Sloan & Co., and it is further

ORDERED, that defendant Sloan appear before this Court on the 26TH day of SEPTEMBER, 1975, at 2:15 o'clock in the AFTERnoon, in Room 906 of the United States Courthouse, Foley Square, New York, New York, for sentencing and it is further

ORDERED that, in the event the defendant Sloan fails to appear before the Court on the date above indicated, the Commission is authorized to serve a certified copy of this Order of Civil Contempt upon the United States Marshal, and the United States Marshal shall, upon receipt of a certified copy

of this Order of Civil Contempt, arrest Samuel H. Sloan and confine him to the ~~Federal House of Detention~~ METROPOLITAN CORRECTIONAL CENTER, New York, New York, until he permits immediate examination in an easily accessible place by examiners and other representatives of the Commission of the books and records of Sloan & Co.

Dated: New York, New York
~~AUGUST~~ SEPTEMBER 3, 1975

Robert L. Ward
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION Plaintiff, - against - SAMUEL H. SLOAN, Individually and d/b/a SAMUEL H. SLOAN & CO. Defendants.	74 Civil 5729 (RJW) AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

RALPH PERNICK, being duly sworn, deposes and says:

1. I am an attorney employed by the United States Securities and Exchange Commission in its New York Regional Office.

2. On August 22, 1975 I served a copy of the within Notice of Settlement and Order of Civil Contempt by depositing a true copy of same in a prepaid envelope in an official depository under the exclusive care and custody of the United States Postal Service addressed to the following location:

Samuel H. Sloan
c/o 917 Old Trent's Ferry Road
Lynchburg, Virginia 24503

RALPH PERNICK

Sworn to before me this
22nd day of August, 1975

NOTARY PUBLIC

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff

-against-

SAMUEL H. SLOAN, Individually and d/b/a SAMUEL H. SLOAN & CO.

Defendants.

NOTICE OF APPEAL

74 Civil 5729
RJW

PLEASE TAKE NOTICE that the undersigned hereby appeals to the United States Court of Appeals for the Second Circuit from the orders of the Hon. Robert J. Ward dated July 22, 1975 in which the motion of defendant for an injunction enjoining plaintiff from harrassment and annoyance of defendant was denied and the motion of defendant for an order holding plaintiff and various agents and attorreys of plaintiff in contempt of court and disqualifying them from appearing further in this action was denied and from the order dated September 3, 1975 in which the defendant Samuel H. Sloan was adjudged to be in contempt of court.

Yours, etc.

Dated: Lynchburg, Virginia
September 10, 1975

Samuel H. Sloan
917 Old Trents Ferry
Lynchburg, Virginia 24503
(804) 384-1207
September 10, 1975

To: Securities & Exchange Commission
26 Federal Plaza
New York, N. Y. 10007

Lic - Stan

AFFIDAVIT OF PERSONAL SERVICE

STATE OF NEW YORK,
COUNTY OF RICHMOND ss.:

EDWARD BAILEY being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. 10302. That on the 24 day of Nov , 1975 at No. Foley Sq. N Y C deponent served the within Appendix upon Atty Gen of the Appellee herein, by delivering a true copy thereof to him personally. Deponent knew the person so served to be the person mentioned and described in said papers as the Appellee therein.

Sworn to before me,
this 24 day of Nov 1975

Edward Bailey

William Bailey

WILLIAM BAILEY
Notary Public, State of New York
No. 43-0182945
Qualified in Richmond County
Commission Expires March 30, 1976